TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 368.

JAMES S. FRENCH, APPELLANT,

vs.

SAMUEL M. SHOEMAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VIRGINIA.

FILED DECEMBER 9, 1870.

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1 1.—*Bond.*

Circuit court of the United States of America, district of Virginia.

S. M. SHOEMAKER
vs.
JAMES S. FRENCH.

Know all men by these presents that we, James S. French and Lewis McKenzie, are held and firmly bound unto Sam'l M. Shoemaker in the sum of five hundred dollars, to be paid to the said S. M. Shoemaker, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated this 28th day of June, A. D. 1870.

Whereas the above-named James S. French hath prosecuted *a* appeal to the Supreme Court of the United States to reverse the judgment in favor of said S. M. Shoemaker, rendered in the above-entitled suit by the circuit court of the United States for the district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named James S. French shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES S. FRENCH. [SEAL.]
LEWIS McKENZIE. [SEAL.]

Sealed and delivered in presence of—
E. C. BAUM.
W. B. ATKINSON.

The foregoing bond is approved.
June 28, 1870.

JOHN C. UNDERWOOD,
Dist. Judge.

2 (Indorsed:) No. —. United States court, district of Virginia. Shoemaker vs. French. Bond. Filed June 30, 1870. W. H. Barry, clerk.

3 2.—*Citation.*

In the circuit court of the United States, district of Virginia.

UNITED STATES OF AMERICA, *ss:*

To Sam'l M. Shoemaker:

Whereas James S. French has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Virginia, made in favor of you, the said S. M. Shoemaker, against the said Ja's S. French, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Alexandria, this 28 day of June, A. D. 1870, and of our independence the 94th year.

JOHN C. UNDERWOOD,
Dist. Judge.

4 Executed this 2nd day of July, 1870, by delivering to Geo. W. Brent, attorney for Sam'l M. Shoemaker, a true copy of this writ.

D. B. PARKER,
U. S. Marshal,
By S. N. GARWOOD,
Deputy.

(Indorsed:) Shoemaker vs. French. Citation. Marshal, $2; mileage, $7 32—$9 32.

5 3.

UNITED STATES OF AMERICA, *District of Virginia:*

Pleas and proceedings before the circuit court of the United States for the district of Virginia, held at Richmond, in said district, on the 21st day of June, A. D. 1870.

Be it remembered that heretofore, to wit, on the 16th day of November, 1868, came S. M. Shoemaker, by his counsel, and filed his bill in equity against James S. French, which said bill is in the words and figures following, to wit:

6 3.—*Bill.*

In the circuit court of the United States for fourth circuit, district of Virginia.

SAMUEL M. SHOEMAKER, COMP'T,
against
JAMES S. FRENCH, DEF'T.

To the honorable the judges of the circuit court of the United States for fourth circuit, district of Virginia, sitting in equity:

Samuel M. Shoemaker, a citizen of the State of Maryland, brings this, his bill of complaint, against James S. French, a citizen of the State of Virginia, and thereupon your orator complains and says:

First. That the legislature of the State of Virginia, in the year one thousand eight hundred and fifty-four, granted a charter to said James S. French and others, for the construction and operation of a railroad from the city of Alexandria to the city of Washington, under the name of the Alexandria and Washington Railroad Company.

Second. That said company was organized duly, and the stock thereof taken by said French and a certain Walter Lenox, in the proportion of three-fourths by said French, and one-fourth by said Lenox, who from that time have continued to hold and own the whole of said stock, and the entire interest in the road and property of said company, until they conveyed the whole of said stock and interest to your orator, as is hereinafter set forth.

7

Third. That, soon after the organization of said company, said parties entered into money obligations to procure means to build the road which it was chartered to construct, upon many of which suits were

brought and judgment obtained, amounting to about $150,000; and to secure three of which obligations, said parties executed deeds of trust, as follows:

First. Deed to Joseph H. and A. Thomas Bradley, on the 18th day of April, 1855, to secure the city of Washington $60,000.

Second. To A. Louis Kinzer, on the 31st day of December, 1855, to secure Fowle, Snowden & Co., $14,849 50; and

Third. To said Walter Lenox, on the 16th day of July, 1857, to secure $30,000 of the bonds of said company, and your orator is informed and believes that said French received from said company and its business more money than he ever paid on account of it.

Fourth. That, on the breaking out of the war of rebellion, the said French and Lenox went South, and the said road was taken pos-
8 session of by the Government, who used the same for military purposes solely, and continued in possession thereof until some time in the year 1865.

Fifth. That while said French & Lenox were within the confederate lines, and prevented, by the exigences and confusion of the war and the military possession of the said road by the Government, from actual possession of the same, certain parties, fraudulently conspiring to obtain possession of said road when the same should no longer be needed by the Government for military purposes, under color of an irregular and fraudulent proceeding, made a pretended sale of said road and property under the third-mentioned deed of trust, and thus unjustly and illegally, under the color of provission of the code of Virginia, set up a spurious and fraudulent pretended corporation—the Washington, Alexandria, and Georgetown Railroad Company.

Sixth. That your orator, as the superintendent and manager, and trustee of the Adams Express Company, carriers, doing a large business over the railroads of the country, and carrying for the Government almost all the money it transmits, made in the year one thousand eight hundred and sixty-five, immediately upon the final suppression of the rebellion, large advances to the southern railroads, to enable
9 them to resume operations, and thus carry for said express company and the public; that said advances amounted to over half a million of dollars; and after they had been made, your orator found that said express company were likely to be embarrassed in the transaction of its business between New York and the South, by an ordinance introduced into the council of the city of Washington to prevent the running of steam locomotives on the road through the city, which had been laid down by the Government, and which was taken possession of by said parties, who had, as aforesaid, fraudulently obtained possession of said road in Virginia. On enquiry your orator found that said ordinance was intended to enforce the payment of the sum secured by the first of said deeds of trust mentioned in paragraph No. 4; and in order to prevent the passage of said ordinance, said expresss company agreed, upon certain conditions, to pay the said city the sum of $60,000 for said fraudulent corporation, but in extinguishment of said debt of said Alexandria Railroad Company, of which it represented to your orator it was duly and legally the successor.

10 Seventh. That after the making of said contract to pay said debt to the city of Washington, your orator was informed that said James S. French and Walter Lenox had instituted a suit in the circuit court of Alexandria County, in the name of the Alexandria and Washington Railroad Company, claiming that the sale of the property of said company, under which said pretended corporation claimed to

hold said railroad was fraudulent and void, and said pretended corporation founded thereon, was without authority or title to said property.

Eighth. That meantime, and before the decree mentioned hereinafter was pronounced, and in order to aid said pretended corporation in making said road of service to the public and said express company, your orator, on its behalf, made contracts with a certain O. A. Stevens, and W. Jackson Phelps, as the agents of said railroad corporation, and expended a large amount of money therefor, as is fully set forth in the proceedings in a case now pending in this honorable court, between said express company and a certain W'm H. Marbury and others.

Ninth. That on or about the ___ day of November, 1866, the circuit court of Alexandria County passed an interlocutory decree in said case, brought by said Alexandria and Washington Railroad Company against said pretended and fraudulent corporation, in which said
11 court expressed the opinion that the sale under which it pretended to hold said road and exercise its pretended corporate rights to be null and void, and said pretended corporation without any foundation in law, and ordered an account to be taken of the debts due by said Alexandria and Washington Railroad Company. Thereupon, and after said decree was made, said James S. French sold and conveyed all his right and title and interest in and to said Alexandria and Washington Railroad Company, and its franchise and property, for the securing the sum of $5,000 paid him by your orator, and after its payment to hold the same as trustee of certain parties to an agreement made by said French with your orator and said parties, as will appear by a copy of his deed conveying the same, herewith filed, marked S. M. S., No. 1, as part of this bill; that said Lenox also conveyed all his interest in and to said railroad company's road and property by deed, a copy of which is herewith enclosed, marked S. M. S., No. 2, as part of this bill.

Tenth. That said agreement referred to in Exhibit No. 1 was made by and between your orator, Walter Lenox, Geo. W. Brent, O. A.
12 Stevens, W. Jackson Phelps, and J. Dean Smith, and was signed and executed by said French, and became complete and effective on the day of the date of his said deed, and as part of the transaction by which he received from your orator said sum of $5,000.

Eleventh. That by the terms of said agreement your orator became bound to pay, for himself or on behalf of the Adams Express Company, all the debts due by said Alexandria and Washington Railroad Company, and all such as were contracted by said Stevens and Phelps, as agents or lessees of said Washington, Alexandria, and Georgetown Railroad Company, for the expense of running said road or the purchase of machinery and rolling stock therefor; and that the amount of said debts of said Alexandria and Washington Railroad Company, as stated by the commissioner of the circuit court of Alexandria County, under said decree, is about $195,000, subject to such reduction as your orator may be enabled to obtain by subjecting said debts to a strict legal examination, as trustee of said parties to said agreement, as well as in his own behalf.

13

14 Twelfth. That your orator has already paid a debt due by said Alexandria and Washington Railroad Company, upon which judgment had been obtained and execution was about to issue, (which was contracted for a lot over which its road runs,) in execution and part performance of said agreement on his part, and is abundantly able

of his own means to pay all of said debts, if the Adams Express Company does not choose to adopt said contract or agreement, and is prepared to pay and liquidate said debts, when properly ascertained, and to carry out said agreement on his part, in the spirit and letter of it.

Thirteenth. That he is informed and believes, and so states and charges, that said French and Lennox, the sole owners and stockholders in and to said Alexandria and Washington Railroad Company, authorized said Geo. W. Brent, one of the said parties to said agree-
15 ment, to act as the attorney of said company in the prosecution of said suit against said pretended corporation, and gave him full and ample powers to this end, and, in fact, created him a trustee and agent of said company for this purpose, and put into his hands the seal and record book of said company, to hold and use as such trustee and agent; and that from the time of the institution of said suit until now, there has been no proper meeting of the stockholders or directors of said company, and, in fact, said Brent, as thus empowered and possessed of said seal, has, in fact, been solely authorized to act for said company, said French having, in fact, no duties and powers, in the semi-organized state of said company, as an officer thereof.

Fourteenth. That the facts stated in paragraph 13 became known to your honor, and were acted upon by him in making said agree-
16 ment with said Brent and others, as aforesaid; and without such being the case, he would not have made the same, as he had no confidence in said French, and would not have entered into any contract which he could control, but had, and still has, entire confidence in the skill and integrity of said Brent, and relies upon him as the party who has the entire control and management of said suit.

Fifteenth. That, by said agreement, a copy of which will be filed when the exigencies of the case requires it, it is provided that a reorganization of said Alexandria and Washington Railroad Company shall take place on the rendition of a decree in said case in the circuit court of Alexandria County; and your orator states and charges that, until such reorganization is effected, there is in fact no officer of said company competent to interfere with said suit, or to issue any order therein, save the said Brent.

Sixteenth. That, on the 28th day of August, 1868, the circuit
17 court of Alexandria County passed a final decree in said suit, so conducted by said Brent, for and in behalf of said French and Lennox and said Alexandria and Washington Railroad Company, by which it decreed that said Washington, Alexandria, and Georgetown Railroad Company had no existence, as will appear by a copy of said decree filed herewith, marked S. M. S., No. 3, and which he prays may be taken as part of this bill.

Seventeenth. That, after said decrees were passed, the said Lennox, who had heretofore acted as the secretary of said Alexandria and Washington Railroad Company, gave notice to the said parties to said agreement to meet at his office for the purpose of taking the proper steps to reorganize said company under said agreement, at which meeting said French and all the parties to said agreement were present, except your orator, who was represented by his attorney, who in-
18 formed and assured said parties on his behalf and by his authority, that your orator demanded an immediate reorganization of said company, and that he (your orator) was prepared to carry out the conditions of said agreement on his part; that after said meeting, and on the 26th day of September, 1868, the said parties to said agreement held a formal meeting, of which said French had a full notice, and

passed a series of resolutions, a copy of which is herewith filed, marked S. M. S., No. 4, as part of this bill.

Eighteenth. That, in pursuance of said resolutions, notice was given, according to the provisions of the code of Virginia, for a meeting of all parties interrested in said company, of a meeting to be held for the purpose of reorganizing the same on the 29 day of October, 1868, a copy of which is herewith filed as part of this bill, marked S. M. S., No. 5.

Nineteenth. That said French, notwithstanding the convey-
19 ance of his entire interest in said company and its property to your orator, and his execution of said agreement, and his attendance upon said meeting, and the publication of said notice, and notwithstanding he, in connection with said Lennox, had invested said Brent with full control of said suit, and the affairs of said company as aforesaid, on the 30th day of September, 1868, in fraud of your orator and said parties, and in violation of his duties to them, and without any authority whatever, executed a pretended bond as the bond of said company as required by said decree, and ordered the clerk of the circuit court to issue a writ of possession ordering the restoration of the road and property of said company, and under color of this fraudulent and illegal proceeding attempted to take possession of the said road and property, notwithstanding the same was in possession of, and under control of, this court, at the suit of the Adams Express Company,
20 which, through your orator, was and is a party to said agreement.

Twentieth. And your orator believes, and so states and charges, that said French is so reckless and regardless of his obligation to your orator and said parties to said agreement, and so determined, by any fraud or violence, to prevent the execution of the same in the reorganization of said company, that, unless restrained by this court, he will annoy and harrass your orator and said parties so as to embar'ass their proceedings and damage their interest irreparably.

Twenty-first. That your orator states, and distinctly charges, that said actings and doings of said French are dishonest and fraudulent, and against equity and good conscience, and are intended to induce your ofator to advance said French a further sum of money, to which
21 he has no claim whatever. Your orator has already offered to convey to him his interest in the stock and property of said company upon payment of said sum of five thousand dollars; but said French refused to pay the same upon said terms, and your orator, as the trustee of the parties to said agreement, under the conveyance of said French to him, has no authority to do more than he has offered thus to do, and is specially entitled, as such trustee, to the protection of a court of equity, and has no adequate remedy elsewhere.

In tender consideration whereof, and to the end, therefore, that the said James S. French may, if he can, show why your orator, in his own behalf, and as trustee for said parties to said agreement, should not have the relief prayed for herein, and that he, the said French, may, upon his corporeal oath, full, direct, and true answer make to the several interrogatories hereinafter mentioned and set forth, as by the
22 note hereunder written he is required to answer; that is to say—

First. Whether Exhibit S. M. S., No. 1, is not a true copy of the deed of assignment made by him as set forth in the foregoing part of this bill, and whether he did not receive the said money which is therein stated.

Second. Whether he did receive the notice, a copy of which is filed as

Exhibit S. M. S., No. 4, and whether he was present at the meeting held in accordance therewith.

Third. Whether the complainant did not demand of him the payment of the sum of two thousand dollars mentioned in the said deed, Exhibit No. 1, a notice of which, Exhibit No. 6, is a copy; if so, whether he has paid said sum as demanded.

Fourth. Whether he, the said French, did not call a meeting of certain persons who had declared and sworn that they were not directors of the Alexandria and Washington Railroad Company, and
23 induce them to hold a pretended meeting as the directors of said company, and whether he did not know that they had filed affidavits to the effect that they were not such directors.

And that said French may be restrained and enjoined from doing or attempting to do any act whatever as president of said Alexandria and Washington Railroad Company; and that he be restrained from intermeddling or interfering with the road and property of said company, or from intermeddling or interfering with the parties to said agreement, or your orator in carrying out the provisions thereof, or from holding any meeting for the reorganization of said company, or from taking, or attempting to take, any proceedings at law or in equity for that purpose, except by proceedings in this suit, or by attending the meetings
24 for the purpose *or* such reorganization, and voting or using the interest he may have under said deed of assignment, or said agreement, if he have any, for the quiet and proper object of said meetings; and that his said interest may be sold by a commissioner of this court, appointed for that purpose, for the payment of said sum of $5,000, according to the practice of the court; and that your orator, in his own behalf, and as trustee of said parties to said agreement, may have such other and further relief as his case and their interest may require.

May it please your honour to grant unto your orator the United States writ of subpœna, commanding said French to be and appear in this court at some certain day to be therein named, to answer and abide by, and perform such decree or order as may be passed herein; and that the writ of injunction and prohibition may issue enjoining and restraining said French, his servants, or agents and attorneys, as hereinbefore prayed, from using the name of president of the Alexandria and Washington Railroad Company, or from interfering or intermeddling
25 with the road or property of said company, in any way, or from interfering or intermeddling with your orator, or said parties to said agreement, in holding meetings or doing anything about the reorganization of said company, or otherwise, either by proceedings at law or in equity, or otherwise than by proceeding in this cause according to the practice of this honorable court.

And as in duty bound, we will ever pray, &c.

SAM. M. SHOEMAKER.

J. DEAN SMITH,
BRENT & WATTLES,
Of Counsel for Compl't.

Subscribed and sworn to before me this 27th of October, 1868.

[SEAL.] ROB. LYON ROGERS,
U. S. Commissioner in and for the District of Maryland.

STATE OF MARYLAND, *City of Baltimore:*

I, William W. Latimer, commissioner of deeds for the State of Virginia and for the State of Maryland, residing in the city of Baltimore,

Maryland, do hereby certify that Samuel M. Shoemaker, whose
26 name is signed to the foregoing bill, this day personally appeared before me, in my city aforesaid, and made oath in due form of law that the matters and things stated therein are true to the best of his knowledge and belief.

In testimony whereof I have hereunto signed my name and affixed my seal of office.

[SEAL.]

W. W. LATIMER,
A Commissioner for Virginia.

27 Ordered that the usual writ of subpœna be issued in this cause, & that the defendant, James S. French, show cause why the injunction prayed for in this bill should not be granted, at the court-room, in the custom-house, in Richmond, on the 16th day of November next, at 10 o'clock a. m., provided that a copy of this bill & this order be served upon said French ten days before the said 16th of November next.

Dated October 27, 1868.

(Signed) JOHN C. UNDERWOOD,
Dist. Judge.

JA'S S. FRENCH.

SIR: Take notice that, on the 16th day of November, A. D. 1868, in pursuance of the order of the Hon. Jno. C. Underwood, at the court-room, in the custom-house, in the city of Richmond, Va., I shall
28 move, at 10 a. m., the honorable circuit court of the U. S. for the State and district of Va., for an injunction against you, according to the terms and prayer of the bill, a copy of which bill & order aforesaid is here served upon you.

SAM'L M. SHOEMAKER,
By his Counsel.

ALEXANDRIA, VA., *Oct.* 27, 1'68.

Executed this 27th day of October, 1868, by delivering true copies of the foregoing bill and order on James S. French, in person.

GEO. C. HEWES,
Acting Marshal U. S. for State & District of Va.

29 4.—*Exhibit* 3.

VIRGINIA, ALEXANDRIA CIRCUIT COURT,
August 28, 1868.

THE ALEXANDRIA & WASHINGTON R. R. Co. et al., plaintiffs,
vs.
THE WASHINGTON, ALEXANDRIA, & GEORGETOWN R. R. Co. et al., defendants.
} In ch'y.

This cause coming on this day to be heard upon the papers formerly read on the amended bill, answers, and exhibits, and upon the application of C. R. Coleman & others for a removal of this cause to the circuit court of the United States for the district of Virginia, the motion of the same parties to strike out the setting of this cause for hearing by the clerk, and that the case be set down for hearing on demurrer, and the exceptions of the said Charles R. Coleman & others to the commissioner's report returned on this cause, and argument of counsel being heard; on

consideration whereof the court overrules the said several motions of the said Coleman & others; and the court proceeding to make such decree herein as it is advised it is right and proper, doth adjudge, order, and decree that the order of the county court of Alexandria, made on the 3d day of February, 1862, removing Walter Lenox, trustee under the decree of 16th July, 1854, and substituting Joseph B. Stewart in his stead, was without authority of law; the same is hereby declared null and void, and set aside; and that all the proceedings of the said Joseph B. Stewart, as substituted trustee subsequent thereto, his sale and conveyance of the said road to Alexander Hay and Joseph Thornton, on on the 14th April, 1862, and the organization thereunder of the company styled The Washington, Alexandria, and Georgetown Railroad
30 Company was illegal, and are hereby *anulled* and set aside. But it appearing to the court that, by virtue of the said sale and conveyance, a new company styled The Washington, Alexandria, and Georgetown Railroad Company was organized, which took possession of the said road, has equipped and operated the same, and has issued large amounts of stocks, by virtue of an act of the general assembly passed Jan'y 23, 1864, authorizing an increase of its capital stock to an amount not exceeding in the aggregate five hundred thousand dollars, and to issue and sell its bonds to an additional amount of two hundred thousand dollars; and it further appearing that the said company has created debts and incumbrances upon the same; and further that, under the authority aforesaid to issue stocks and bonds to a limited amount, a large amount has been issued in excess of said authority, which has been sold, and are now in the hands of the purchasers thereof; and with a view to ascertain what equities may exist growing out of said transactions, the court doth further order, adjudge, and decree that one of the commissioners of this court do inquire into, ascertain, and report.

1st. What was the amount of the liabilities of the Alexandria and Washington Railroad Company on the day of the sale made by Jos. B. Stewart, viz, 10th April, 1862; to whom due, with the priorities.

2d. What was the condition of the road at the date of the sale as regards its capacity for transportation; and in whose use was the road at that time, and when the parties then in possession transferred the same, and to whom?

3d. What amount of liabilities has been contracted by the Washington, Alexandria, and Georgetown Railroad Company since the 10th April, 1862, to whom due, by whom, and by what authority said
31 liabilities were contracted; and if any such since that date have been paid, by whom, under what authority, and from what source were the funds necessary derived?

4th. What amount of stock of the said new company was issued, by whom, and by what authority; what amount was paid for, and by whom, and by whom received?

5. How much of said stock thus issued was genuine stock issued by the company under its authority, and how much was spurious; and by whom, and under what circumstances the same was issued?

6. What amounts have been expended in the reconstruction and equipment of said road since 10th April, 1862; to whom paid, and from what source the funds were derived?

7th. What real estate in Virginia has been purchased since that date, at what price, how much remains due thereupon, and to whom?

8th. What amount was received from the United States Government

for the transportation of troops; and how expended, and what amounts are now due for that service?

9th. That he take an account of the earnings of the said road since the 10th April, 1862, and any amounts received by the new company for earnings prior thereto; what amount of improvements since that date have been placed upon it, and by whom, and how paid for; and what amount of property belonging to the Alexandria and Washington Railroad Company was received by the said new company, and how disposed of or by the defendants or any of them.

10th. That the exceptions taken to the former report by Coleman & others, as well as the report itself, be recommitted; that the commissioner be required to take any further testimony that may be sub-
32 mitted by any of the parties to the cause; and that he proceed to take the account, and make the inquiries required under the former decree, except so far as they may be comprised in this order; and that in executing this decree, he will state any other matter which he may deem pertinent, or that any of the parties may require; and to carry this order into effect, that he may propound such interrogatories to either of the parties to this cause, *that* he may deem material, and that of the taking of this account, he give notice according to law, by publication, which shall be deemed equivalent to personal service.

And the court doth further order, adjudge, and decree that, inasmuch as the Washington, Alexandria, & Georgetown Railroad Company have acquired no legal title to the said road under the proceedings of the county court of Alexandria & the acts of the said substituted trustee, that the said road now in possession of the officers, agents, lessees, or servants of the said Washington, Alexandria, & Georgetown Railroad Company be restored to the possession of the Alexandria and Washington Railroad Company, its duly constituted officers and agents. But it appearing to the court from the proof filed in this cause, that the said Alexandria and Washington Railroad Co. is largely indebted, and has created incumbrances upon the said road by deeds of trust in favor of the city of Washington, Fowle, Snowden & Co., and Benjamin Thornton, and that there other liens existing thereupon prior to the organization of the new company; and that the said company may be, upon a further and final hearing of this cause, held to a certain extent responsible for the debts and liabilities incurred by the new company, upon which the court express no opinion, doth further order, adjudge,
33 and decree that before so much of the decree as requires the restoration of the road to the Alexandria and Washington Railroad Company shall take effect, the said company, or some one for them, shall enter into bond with sufficient security, to be approved of by the clerk of this court or the judge thereof in the penalty of $50,000, faithfully to account for the receipts and expenditures of the said road. And it is further required and decreed, that said company shall report its proceedings with a full account of its receipts and expenditures, with the cash on hand to the first day of each term of this court, subject to its order.

And at the instance of the defendants, who desire to present an appeal, the execution of this order is suspended till 15 November next, upon such person or persons giving bond before the clerk of this court in the penalty of five thousand dollars, conditioned according to law.

A copy. Teste:

J. TACEY, *Clerk.*

(Indorsed:) A. & W. R. R. Co. et al. vs. W., A., & G. R. R. Co. et al. Decree. Exhibit S. M. S., No. 3.

34 5.—*Exhibit No.* 4.

WASHINGTON CITY, *September 26th*, 1868.

Met in pursuance of the accompanying notice, at the office of the Adams Express Company, in the city of Washington, the herein named parties, Walter Lenox, George W. Brent, Oscar A. Stevens, S. M. Shoemaker, and J. Dean Smith.

WASHINGTON CITY, *September 22d*, 1868.

To Messrs. James S. French, Oscar A. Stevens, W. J. Phelps, J. Dean Smith, R. T. Merrick, George W. Brent, and S. M. Shoemaker:

GENTLEMEN: The circuit court for Alexandria County having, at its last August term, rendered a decree deciding that the Alexandria and Washington Railroad Company was entitled to the road, and that the sale made by J. B. Stewart, on the 10th of April, 1862, was null and void, the time has therefore come, when, by the stipulations of the contract of the 6th December, 1864, paragraph No. 4, executed by myself and Messrs. James S. French, S. M. Shoemaker, and others, should be carried into effect, I therefore request you to meet me on the 26th day of September, 1868, at the Adams Express Office, Pennsylvania avenue, in the city of Washington, at 12 M., for the purpose of organizing the company, contemplated by the said contract, and giving full effect to its provisions.

I am, very respectfully, your ob't serv't,
(S'g'd) WALTER LENOX.

35 Upon motion, George W. Brent was appointed chairman, and Walter Lenox secretary of said meeting.

The call for the meeting was, by direction of the chairman, read by the secretary, and upon which the chairman invited action of the meeting.

Upon motion, it was—

Resolved, That the time has arrived when it is necessary and advisable that the purposes and objects of said call shall be carried into effect by the parties interested therein; and with that view, George W. Brent be authorized and requested to prepare, and cause to be published, a notice in conformity with the code of the State of Virginia, and the requirements of the contract referred to in said call.

Resolved, That George W. Brent be requested and authorized to retain the possession of the seal of the Alexandria and Washington Railroad Company, until otherwise directed by the parties representing a majority of the interests represented in said railroad.

Resolved, That Oscar A. Stevens, and W. J. Phelps, be requested to furnish to said meeting a statement of the property and effects belonging to, & claimed to belong to, said Alexandria and Washington Railroad Company; the condition of said road, especially that of the railroad bridge across the Potomac River; also, a statement of their written or verbal agreements with J. H. Lathrop, receiver; also, the number of their employees, under their own appointment, or by agreement with said receiver, and their respective salaries; and further, the property of every road belonging to the said Stevens and Phelps, as lessees of the Washington, Alexandria, and Georgetown Railroad Company,
36 or in their own right, which may become the property of the Alexandria and Washington Railroad Company, by virtue of the agreement herein referred to.

Resolved, That Richard T. Merrick, George W. Brent, and J. Dean Smith, in association with S. M. Shoemaker, be, and they are hereby, authorized to prosecute, protect, and promote the interests of the proposed and agreed-upon reorganization of the Alexandria and Washington Railroad Company touching the claims of said company against the Government of the United States.

Resolved, That the chairman be requested to report to said meeting a plan of organization as contemplated by the contracts dated 6th December, 1867, between the parties herein named, and one James S. French, of the State of Virginia; and also report upon the condition of the property of said road, and all matter of litigation now pending in relation thereto.

Adjourned to meet at the called meeting, on the twenty-ninth day of October, 1868.

(Signed) WALTER LENOX,
Secretary

(Indorsed:) S. M. Shoemaker v. James S. French. Exhibit S. M. S., No. 4.

37 *Notice.*

A general meeting of the stockholders of the Alexandria and Washington Railroad Company, will be held on Thursday, the 29th of October next, at the Mansion House, in the city of Alexandria, Va., at 12 o'clock, M.

WALTER LENOX,
Secretary.

(Indorsed:) S. M. Shoemaker vs. James S. French. Exhibit S. M. S., No. 5.

38 6.—*Letter.*

To JAMES S. FRENCH.

SIR: As your late proceedings show an utter disregard of your contract engagements, made with myself and others, on the 22d day of December, 1867, I demand the immediate payment of the sum of five thousand ($5,000) dollars, and interest, loaned you on that day, on the pledge of the whole interest you have, under said agreement, in the Alexandria & Washington Railroad; and upon repayment of said sum, you will receive a reconveyance of the stock or interest in said road, to which you are entitled under said agreement.

SAM. M. SHOEMAKER.

ALEXANDRIA, *Octo.* 9, 1868.

(Indorsed:) S. M. Shoemaker vs. James S. French. Exhibit No. 6.

S. M. Shoemaker, to Ja's S. French:

Notice.

ALEXANDRIA COUNTY, *to wit*:

I, Robert Bell, a justice of the peace for the county aforesaid, in the State of Virginia, do certify, that R. W. Falls this day personally ap-

peared before me in my county aforesaid, and made oath, in due form of law, that, on the 9th day of October, 1868, he served a copy of the within notice on Ja's S. French, in person.

Given under my hand this 9th day of October, 1868.

ROB'T BELL, *J. P.*

39 7.—*Injunction.*

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Virginia, ss:

The President of the United States of America to James S. French, greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America for the district of Virginia, at the court-room, in the city of Richmond, in said district, on the 1st Monday in the month of December next, to answer the bill of complaint of Samuel M. Shoemaker, a citizen of the State of Maryland, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Virginia to execute:

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 16th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 93d.

[L. S.] W. H. BARRY, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless he enter his appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

W. H. BARRY, *Clerk.*

40 (Indorsed:) No. . Circuit court of the United States, district of Virginia. Sam'l M. Shoemaker vs. James S. French. Chancery subpœna. Returnable December rules, 1st Monday Dec'r, A. D. 1868. W. H. Barry, clerk. Filed A. D. 18 . Clerk. J. Dean Smith, Brent & Wattles, comp't sol.

U. S. MARSHAL'S OFFICE,
Richmond, Va., Nov. 14, 1868.

I hereby depute G. W. Rock, deputy sheriff, to execute this writ, and make return in due form.

CH'S VAN WINKEL,
U. S. Marshal.

Executed by delivering a copy to Ja's S. French, November 20, '68.

GEO. W. ROCK,
Special Deputy,
For CH'S VAN WINKEL,
U. S. Marshal.

41 8.

And at another day, to wit, at a circuit court of the United States for the district of Virginia, held on the 3d December, 1868, came the parties by their counsel; and thereupon, on motion of the plaintiff, by counsel, it is ordered that an injunction be allowed, according to the prayer of the plaintiff's bill, upon his executing a bond before the clerk of this court, in the penalty of $5,000, and conditioned according to law.

42 9.—*Bond.*

United States circuit court, district of Virginia.

SAMUEL M. SHOEMAKER
vs.
JAMES S. FRENCH. } In chancery.

Know all men by these presents that we, Samuel M. Shoemaker, and Joseph F. Gibson, are held and firmly bound unto Joseph S. French, in the just and full sum of five thousand ($5,000) dollars, to the payment whereof well and truly to be made unto the said James S. French, his heirs, executors, administrators, and assigns, we bind ourselves and our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 10th day of December, A. D. 1868.

The condition of the above obligation is such that whereas Samuel M. Shoemaker, in his suit pending in the circuit court of the United States for the district of Virginia, against the said James S. French, obtained an injunction against the said James S. French, his servants, agents, and attorneys, & all others, according to the prayer of the bill in said suit, to which order of injunction special reference is hereby made, and by the said order it is provided that the same shall be ineffectual until the complainant shall file in this court his bond, with good and sufficient surety, to be approved by the clerk of this court, in the penalty of five thousand dollars, conditioned to answer all costs and damages arising to the defendant out of this proceeding.

43 Now, therefore, if the said Samuel M. Shoemaker shall pay all such costs and damages as may be awarded against him in said suit, in case said injunction shall be dissolved, then the above obligation to be void; otherwise to remain in full force and virtue.

SAM'L M. SHOEMAKER,
By J. F. GIBSON, *Att'y.* [SEAL.]
J. F. GIBSON. [SEAL.]

Signed, sealed, & acknowledged in the clerk's office of the circuit court of the United States, this 10th day of December, A. D. 1868.

W. H. BARRY, *Clerk.*

I approve the surety on the within bond, December 10, 1868.

W. H. BARRY, *Clerk.*

(Indorsed:) In U. S. cir. c't, dist. Va. Samuel M. Shoemaker vs. James S. French. Injunction bond. Filed Dec'r 10, 1868. W. H. Barry, clerk.

44 10.—*Power of att'y.*

Know all men by these presents that I, Samuel M. Shoemaker, of the

city of Baltimore, in the State of Maryland, hereby make, constitute, and appoint Joseph F. Gibson, of the city of Richmond, in the State of Virginia, my true and lawful attorney for me and in my name, to sign and execute a certain bond in the penalty of five thousand dollars, which was required to be given by the United States court for the fourth circuit, district of Virginia, in the award of an injunction in a certain suit of Shoemaker versus French, lately heard by said court, hereby ratifying and confirming all my said attorney may do in and about the execution of the said bond. I have hereunto set my hand and seal this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

SAM'L M. SHOEMAKER.

Witness:
R. TRATER.

(Indorsed:) Samuel M. Shoemaker to J. F. Gibson. Power att'y. Filed Dec'r 10, 1868. W. H. Barry, clerk.

45 11.—*Injunction.*

Injunction writ.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Virginia, ss:

The President of the United States of America to James S. French, and to your counsellors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas it hath been represented to the judges of our circuit court of the United States for the district of Virginia, in chancery sitting, on the part of Samuel M. Shoemaker, complainant, in his certain bill of complaint, exhibited in our said circuit court, on the chancery side thereof, before the judges of said court, against you, the said James S. French, to be relieved touching the matters complained of, in which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of injunction issue out of said court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill: We therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said James S. French, your counsellors, attorneys, solicitors, trustees, and agents, and each and
46 every of you that you do absolutely desist and refrain from *from* using the name of president of the Alexandria and Washington Railroad Company, or from interfering or intermed'ling with the road or property of said company in any way, or from interfering or intermed'ling with your orator, (Samuel M. Shoemaker,) or said parties to said agreement, in holding meetings or doing anything about the reorganization of said company, or otherwise, either by proceedings at law or in equity, or otherwise than by proceeding in this case according to the practice of this court, until this honorable court in chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the marshal of the district of Virginia, to execute and return in due form of law.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Norfolk aforesaid, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 93d year.

[SEAL.] W. H. BARRY, *Clerk.*

47 (Indorsed:) No. . Circuit court of the United States, district of Virginia. Samuel M. Shoemaker vs. James S. French. Injunction writ, returnable term, A. D. 186 . W. H. Barry, clerk. Filed A. D. 186 . clerk. J. Dean Smith, att'y for pl't'ff.

U. S. MARSHAL'S OFFICE,
Richmond, Dec. 10, 1868.

I hereby depute S. N. Garwood as a special deputy to execute this writ.

CH'S VAN WINKEL,
U. S. Marshal.

1868, Dec. 11th. Executed by delivering a copy of this writ to James S. French in person.

CHA'S VAN WINKLE,
By S. N. GARWOOD,
Special Deputy.

48 12.—*Notice.*

To Samuel M. Shoemaker:

You are hereby notified that on Friday, the 19th day of November, inst., or as soon thereafter as counsel can be heard, I shall move the honorable circuit court of the United States for the district of Virginia to dissolve the injunction awarded against me, at your instance, and now pending in said court, in the suit of Samuel M. Shoemaker vs. James S. French.

JAMES S. FRENCH.

ALEXANDRIA, VA., *November* 8, 1869.

Served by copy, acknowledged this 8th day of November, 1869.

BRENT & WATTLES,
Sol's for Compl't.

49 (Indorsed:) French, J. S., v. Shoemaker. Notice. Filed November 19, 1869. W. H. Barry, clerk.

50 13.—*Rules.*

And at another day, to wit, at rules, held in the clerk's office of said circuit court of the United States for the district of Virginia, on the first Monday in December, A. D. 1868, came the defendant, by his attorney, and filed his answer to the plaintiff's bill, and the plaintiff filed his replication thereto.

And at another day, to wit, at the rules, held in the clerk's office of said court on the first Monday in January, 1869:

It is ordered that this cause be continued until the next rules.

At which day, to wit, at rules, held in the clerk's office of said court on the first Monday in February, 1869:

On motion, it is ordered that this cause be regularly set down for hearing at the next term of this court.

51 The answer and replications above referred to are in the words and figures following, to wit:

52 14.—*Answer of def't.*

In the circuit court of the United States for the fourth circuit, district of Virginia.

SAMUEL M. SHOEMAKER
vs.
JAMES S. FRENCH.

The answer of James S. French to the bill of complaint exhibited against him by Samuel M. Shoemaker in the circuit court of the United States for the fourth circuit, district of Virginia.

This defendant now, and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as the defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, saith:

1. That the legislature of Virginia, in the year 1854, did grant a charter to the defendant & others for the construction and operation of a railroad from the city of Alexandria to the city of Washington, under the name of the Alexandria and Washington Railroad, as alleged in said bill of complaint.

2d. That it is true, as alleged in said bill of complaint, that the said company was duly organized and the stock thereof taken by the defendant and a certain Walter Lenox, in the proportions of three-fourths by the defendant, and one-fourth by said Lenox; but it is not true,
53 as alleged in said bill, that defendant has ever sold his interest in the said road, or the stock thereof; but, on the other hand, the defendant from the time of the organization of said road has owned, and still does own, three-fourths of the stock of the said road.

3. That it is true, as alleged in said bill, that the defendant and the said Lenox were within the confederate lines, and prevented by the exigencies and confusion of the war, and the military possession of the said road by the Government from actual possession of the same, and that certain parties fraudulently conspiring to obtain possession of said road when the same should no longer be needed by the Government, by certain illegal proceedings made a pretended sale of said road, and set up a new corporation called the Washington, Alexandria, & Georgetown R. R. Co.

4. In answer to the specific interrogatories of said bill, the defendant answers and says:

That exhibit No. 1 is a true copy of a paper executed by the defendant to the complainant, but the defendant denies that it was made for the purpose alleged by the complainant, or had the effect which the complainant alleges it had.

2. That the defendant had notice of the meeting referred to in Exhibit S. M. S., No. 4, and was present at said meeting.

3. That the complainant did demand of the defendant the pay-
54 ment of the sum of five thousand dollars lent by complainant to defendant, and to secure which the defendant executed a mortgage upon his interest and estate in the railroad; but the defendant saith that, upon the said demand being made, he tendered the said sum to the complainant, and demanded a release of said mortgage, and that the complainant refused to receive the said money, and execute the said release.

4. Defendant did not call a meeting of certain persons who had declared and sworn that they were not directors of the said Alexandria & Washington R. R. Co.

And the defendant having now made the foregoing admissions, and answered the specific interrogatories propounded by the complainant in his said bill, for answer to the allegations thereof, saith:

1. That upon his return to Alexandria, after the close of the war, he found that the said road was in the possession of certain parties, who claimed to be the owners thereof, under the name of the Washington, Alexandria, & Georgetown R. R. Co., the complainant being one of the directors of the said pretended corporation.

2. That the defendant, as three-fourths owner of the said road, and president of the Alexandria & Washington R. R. Co., employed George W. Brent, as his attorney, to institute a suit in the circuit court of Alexandria County for the recovery of said road, which action was afterwards assented to by Walter Lenox.

55 3. That the said suit was, in the month of March, 1866, or thereabouts, instituted in the name of the Alexandria & Washington R. R. Co., by its president, James S. French, (the defendant,) under the direction of the board of directors of said company, against the Washington, Alexandria, & Georgetown R. R. Co. and others.

4. That the defendant deposited the seal of the said Alexandria & Washington R. R. Co. with the said George W. Brent for safe keeping.

5. That during the progress of the said suit the complainant, being a director of the said Washington, Alexandria, & Georgetown R. R. Co., was elected treasurer of the same, and J. Dean Smith, the attorney for said company, was elected a director of the same, and the said Oscar A. Stevens, the general agent of the said company, was also elected a director of said company.

6. That, during the pendency of said suit, the said Washington, Alexandria, & Georgetown R. R. Co. made a lease of the said road for the term of ten years to the said Oscar A. Stevens and one W. Jackson Phelps, the general superintendent of said company.

7. That, soon after the said lease was made, one Davison, a stockholder in the said pretended company, instituted a suit in the circuit court of Alexandria County against the said Stevens and Phelps
56 and others to vacate the said lease.

8. That the said George W. Brent, the attorney for the Alexandria & Washington R. R. Co. as aforesaid, became the attorney of the said Stevens & Phelps, and acted as their attorney in defending the suit aforesaid for the vacation of the said lease.

9. That, by a decree of the circuit court of Alexandria County, rendered in said case, the said lease was declared and adjudged void, and vacated, which said decree afterwards was, upon appeal, affirmed by the district court and supreme court of appeals.

10. That the defendant, as hereinbefore stated, being deprived of his

property, and being in great want, was advised by his counsel, the said George W. Brent, to have an interview with the said Stevens & Phelps, J. Dean Smith, and the complainant, for the purpose of making an arrangement by which the said road *road* could be made immediately available for supplying the defendant's present necessities.

11. That the defendant, acting under the counsel of *of* his said attorney, and with a letter from him, (a copy of which is filed herewith, marked Exhibit No. 1,) had an interview with the said Stevens, Phelps, Smith, Lenox, and with one R. T. Merrick, an attorney of said Stevens and Phelps, which said meeting was held at the office of the said Merrick.

57 That, before the said meeting was held, as the defendant has since been informed, the complainant, being the treasurer and a director of the said pretended company, had entered into a contract with the said company, by which he bound himself, in consideration of certain advantages secured to him, to pay off a debt due the city of Washington, amounting to sixty thousand dollars, for which the said city had a lien upon the said road.

13. That, at the said meeting, it was proposed by the said complainant, and the said Smith, Merrick, Stevens & Phelps, that the defendant and the said Lenox, who were the sole owners of the said road, would assign to these said parties a majority of the stock of the said Alexandria & Washington R. R. Co.—the said stock consisting of three thousand shares—to be distributed as follows: to the said complainant five hundred shares, to the said Stevens & Phelps six hundred and fifty shares, and to the said Smith, Brent, and Merrick two hundred shares each; that the said Stevens and Phelps would, in consideration thereof, assign to the said Alexandria & Washington R. R. Co., thus reorganized, their lease, which they had as lessees of the Washington, Alexandria, and Georgetown R. R. Co.; that the said complainant would advance the money necessary to relieve the said road from debt, and to carry on the litigation against the said Washington, Alexandria,

58 and Georgetown R. R. Co., and also advance to the said defendant and the said Lenox large sums of money respectively—to the defendant not less than twenty thousand dollars, to meet and relieve his pressing necessities. The defendant avers that, at the time said meeting was held, he did not know that the complainant and the said Smith and Stevens were directors of the said Washington, Alexandria, & Georgetown R. R. Co.; that the said Smith was the attorney of *of* said company, & the said complainant the treasurer thereof, and therefore did not know that the proposition made by them to the defendant was a fraudulent betrayal of the trusts they had assumed. These parties were all strangers to the defendant. Some of them he had never seen before; others of them he had seen and knew by sight. His interview with them was solely on the recommendation of his counsel, the said George W. Brent. Such was the embarrassment under which the defendant was suffering, resulting from the fraudulent deprivation of his property and the consequent want of himself and family, that he was scarcely in a condition to investigate the nature of the proposition; and such was the confidence which he had in his attorney, the said George W. Brent, under whose counsel he acted, that it was impossible for him to suspect the propriety or the advantages of the proposition thus

59 made to him. Before, however, these propositions were reduced to writing, the defendant was suddenly called by telegraph to his home in Southwestern Virginia, on account of the illness of a member of his family. This was in the month of November, 1866. The defendant

heard nothing more of these negotiations until his return in the month of January or February, 1867, when the contract referred to in complainant's bill, signed by the complainant, the said Stevens, Smith, Brent, & Lenox, was handed to the defendant by the said Brent, and the defendant was pressed by him to sign the same. The said Merrick had not signed the same. The two hundred shares of stock which it was proposed to have allotted him having, at his request, been added to the shares of the said Stevens and Phelps, the defendant declined to sign the said contract upon the grounds that it was not in accordance with the verbal agreement; that it contained no stipulation for the advance of the sum which was agreed to be advanced to the defendant, and the advance of which was the great inducement to his making the said agreement; and that the said contract, in many material particulars, was essentially different from the agreement discussed at the
60 said meeting. The defendant was then threatened by the said Stevens, and those acting in concert with him and the complainant, that they would keep the defendant out of possession of the road for years; that they would set up the contract in a court of equity, and making the impression upon the mind of the defendant that, by protracted litigation, they would render his property in said road unavailing to him. Thus assailed, importuned, and threatened, the defendant, after having for nearly one year resisted their influences, being greatly pressed by his necessities, was at length forced to sign the said contract upon the condition that the complainants would advance to the defendant the sum of five thousand dollars, and the further condition that the contract should be immediately carried into effect.

14. The defendant at the same time executed the mortgage upon all his interest and estate in the said road to secure the payment of the said sum of five thousand dollars, advanced to him by the said complainant. It was represented to him to be only a mortgage for that purpose, and the defendant executed it with that understanding, and for that purpose alone, and no other. And now the defendant avers and charges that his signature to the said contract was obtained by fraud and
61 oppression; that the said contract was void in law & equity, because against public policy, having been fraudulently made by the said complainant, Stevens, Smith, and Phelps, in violation of the fiduciary relations they sustained to the said Washington, Alexandria, & Georgetown R. R. Co.; that the contract to purchase the interest of the said defendant and the said Lenox, and to furnish, supply, and advance the means to carry on the litigation of the suit then pending was illegal, and of the nature champerty; and that for these reasons, and upon these grounds—if there were none other—the said complainant is not entitled to the relief prayed for in his said bill, and especially is not entitled to the injunction prayed for therein; the said contract being obnoxious to the maxim that "ex turpi contractu non oritur actio," all of which will appear from the copy of the bill and prayer for an injunction filed herewith, marked Exhibit No. 2, and so far as it sustains the allegations of this answer is prayed to be read as a part thereof.

That, upon the face of the said contract, there was no consideration sufficient to support said contract, and that it was drawn with the fraudulent purpose and design of deceiving and defrauding the defendant, and the defendant avers that the assignment aforesaid, which
62 he executed only as a mortgage to secure the five thousand dollars advanced to him by the complainant was fraudulently prepared by the complainant, the said Smith and the said Stevens, with the design of deceiving the defendant into an assignment of his interest

and estate in the said road, for purposes other than that which he intended.

The defendant avers further that he is advised, and verily believes that the said complainant has never paid any debt for which the said road is liable out of his own means; that he is the treasurer of the Washington, Alexandria, and Georgetown R. R. Co., and that out of the earnings of the road he paid the only debt he alleges he has paid, amounting only to a few hundred dollars.

And the defendant avers further that he is advised, and verily believes and charges, that the five thousand dollars which the complainant lent to the defendant aforesaid, was lent, not of the private means of the said complainant, but from money in his hands as treasurer of said Washington, Alexandria, & Georgetown R. R. Co.

And the defendant believes and charges that, upon a settlement had between the Alexandria & Washington R. R. Co., and the pretended company of which the complainant is treasurer, that the said pretended company will be found largely indebted to the Alexandria &
63 Washington R. R. Co., to wit, in the much larger sum than the said five thousand dollars lent to the defendant as aforesaid, and that, as president of said company, as well as for his own protection, it is the duty of the defendant to retain the said sum until a settlement of the accounts aforesaid has been made.

The defendant avers that there is a regular and efficient organization of the said Alexandria & Washington Railroad Company; that the defendant is the president of the said company; that George H. Robinson, Nathaniel Boush, T. T. Hill, C. E. Stewart, and Walter Lenox are the directors of the said company; that, at a meeting of said board of directors, held on the 9th day of October, 1868, in the city of Alexandria, the said board passed resolutions directing the president to demand of and receive from the said George W. Brent, or Brent & Wattles, the seal of the said company, and also to notify the said Brent that he was no longer to act as the attorney for the said company.

The defendant avers that it is false, as charged in complainant's bill, that the said directors had made affidavits that they were not directors of said company.

The defendant avers, believes, and charges that the complainants, Phelps, Stevens, Smith, and Brent, have conspired together for the
64 purpose *purpose* of oppressing and defrauding the defendant; that to this end they have imposed upon his confidence, taken advantage of his necessities, seized upon his property, appropriated the earnings of the road, three-fourths of the stock of which is owned by the defendant, for the purpose of preventing the company, of which he is president, from obtaining possession of the road, and by divers other fraudulant contrivances and means have injured, oppressed, and defrauded the defendant.

The defendant avers and charges that, even if the contract or agreement to which the complainant refers had been a binding contract, and supported by good and sufficient consideration, and one which the parties could have set up in a court of equity, yet the complainant and those whom he claims to represent could not enforce the same, because they failed to perform their covenant in this, to wit, that they did *did* not carry the same into effect, at the time stipulated, though the defendant repeatedly called upon them to do so.

And the defendant, denying all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, and that there is any other matter, cause, or thing in the complainant's bill of

complaint, material or necessary for this defendant to make answer thereto, and not herein and hereby well and sufficiently answered, confessed, and traversed, and avoided or denied, is true to the best of the knowledge or belief of the defendant, all of which matters and things the defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with *with* his reasonable costs and charges in this behalf most wrongfully sustained.

65

JAMES S. FRENCH.

H. O. CLAUGHTON,
L. B. TAYLOR,
Counsel for Defendant.

STATE OF VIRGINIA,
Alexandria County, to wit:

This day personally appeared me, Jos. Colton, a justice of the said county, James S. French, who, being duly sworn, made oath that the facts stated in the foregoing answer, which are stated of his own knowledge, are true as stated, and that the statements made upon information and belief are believed to be true.

Given under my hand, this 26th day of November, 1868.

JOS. COLTON, *J. P.*

A copy. Teste:

WM. H. BARRY,
Clerk of Circuit Court U. S. District of Va.

(Bill for injunction filed in Baltimore vs. Shoemaker & others. See my printed answer to this.)

66 To the Hon. Campbell W. Pinckney, judge of the circuit court for Baltimore City:

The bill of complaint of

residents and citizens of the State of Maryland, against

non-residents of said State, and Adams' Express Company, a corporation duly incorporated under the laws of the State of New York, but having an office and transacting business in the said Baltimore City, and against the Washington, Alexandria, and Georgetown Railroad Company, a corporation duly incorporated by the laws of the State of Virginia.

And thereupon your orators, suing on behalf of themselves and all other stockholders of the corporation called the Washington, Alexandria and Georgetown Railroad Company, humbly showeth: That they are stockholders of the Washington, Alexandria, and Georgetown Railroad Company; that said railroad company is duly incorporated under the laws and authority of the State of Virginia.

And your orators further show that the general assembly of the State of Virginia, by act passed 27th February, 1854, provided for the incorporation of a company to construct a railroad between the city of Alexandria, in said State, and Washington City, in the District of Columbia, to be called the Alexandria and Washington Railroad Company; that said corporation was duly organized, and that, in pursuance of authority

conferred upon it by a certain other act of the general assembly of Virginia, passed February 27, 1856, the said last-named corporation was authorized to issue, and did issue, coupon bonds, and to secure the payment whereof, principal and interest, it executed on the 16th
67 July, 1857, a deed of trust conveying its railroad, made and to be made, and all its property, rights, privileges, and franchises to one Walter Lenox; and by which said deed it was provided that, on the continuous default of said corporation to pay principal and interest on said bonds during six months after said principal or interest should be due, *ths* said Lenox, or his successors in office, should sell the above described property and franchises at public auction, after notice as therein specified, and by which it was further provided, that in case of the death, incapacity, or resignation of the said Lenox, trustee as aforesaid, his place should be supplied by any court of record of the county of Alexandria and State of Virginia.

And your orators further show that the said Alexandria and Washington Railroad Company did make a continuous default for more than six months by failing to pay the interest on the coupon bonds, duly issued as aforesaid and then in the hands of purchasers; and that the said Lenox became and was wholly incapacitated from discharging his trust; that by reason of the premises and by virtue of the said deed of trust and certain other proceedings duly and regularly had, the county court of said Alexandria County being a court record, as authorized and directed by the said deed of trust, and by the laws of the State of Virginia, did, on the 3d February, 1862, declare that the said trusteeship was vacant and did appoint one Joseph B. Stewart to act in lieu and stead of the said Lenox, and thereupon such proceedings were duly and regularly had in pursuance of said deed of trust; that on the 10th day of April, 1868, the said Stewart sold the railroad, property, rights, privileges, and franchises of the Alexandria and Washington Railroad Company, at public auction, to one Alexander Hay, he being the highest and last bidder, who duly paid to the said trustee the amount of his bid.

And your orators further show that by the laws of Virginia it is provided that if a sale be made under a deed of trust, executed by a corporation in the form and manner as herein set forth, and a conveyance in pursuance of such sale is duly executed, the corporation executing the deed of trust is, ipso facto, dissolved, and the purchaser *forwith* becomes a corporation by any name which may be set forth in the
68 said conveyance, and as such, invested with all the rights, powers, franchises of the original corporation.

And your orators show that the said Alexander Hay assigned one-half of his interest in said purchase to one Joseph Thornton; and that the said Hay and the said Thornton declared that they would be and were incorporated under the name and style of the Washington, Alexandria, and Georgetown Railroad Company, and, in pursuance thereof, on the 14th April, 1862, the said trustee, by deed duly executed and recorded, conveyed all the road, rights, ways, and franchises, and all and singular, the personal and real property of the said Alexandria and Washington Railroad Company to the said Washington, Alexandria, and Georgetown Railroad Company.

And your orators hereby annexe*s* copies of the act of the assembly of Virginia, incorporating the Alexandria and Washington Railroad, marked Exhibit A; of the act authorizing the issue of coupon bonds, marked Exhibit B; and of the proceedings of the county court of Alexandria, substituting the said Stewart in the place of the said Lenox;

and of the action of said trustee under the said deed of trust and his conveyance to the said Washington, Alexandria, and Georgetown Railroad Company, marked Exhibit C, all of which said exhibits and all other exhibits hereunto annexed are prayed to be taken as a part hereof.

And your orators further charge that all the said proceedings were regular and in accordance with the provisions of the original deed of trust to Lenox, and to the laws of the State of Virginia.

And your orators aver that ever since the last said deed of conveyance, the said Washington, Alexandria, and Georgetown Railroad Company has been a corporation, exercising all the powers and franchises of the Alexandria and Washington Railroad Company acquired as aforesaid; that the use and exercise of its property and franchises has been open and notorious and not questioned until the month of April, 1866, as will hereafter appear, and its existence as a corporation has been repeatedly recognized by the acts of the general assembly of Virginia, and particularly by an act passed 5th February, 1863; by
69 an act passed January 23, 1864, copies whereof are hereto annexed, marked respectively Exhibits "D" and "E;" and by acts of the Congress of the United States, entitled "A bill to extend the charter of the Alexandria and Washington Railroad, and for other purposes," approved March 3, 1863, and by a joint resolution, entitled "Joint resolution authorising Secretary of War to adjust and settle the claim of D. Randolph Martin, assignee of the Washington, Alexandria, and Georgetown R. R. Co., approved February 28, 1867, and by other acts.

And your orators further aver that, during all that period of time, the said Washington, Alexandria, and Georgetown Railroad Company has had a succession of corporate authorities; that it issued its stock and bonds as authorized by law and the same were sold and currently dealt in by persons in the public markets of the country without notice of any adverse claim; and that a bridge over the Potomac River, constructed in pursuance of an act of Congress, costing over $200,000, has been built by it at its own expense, and other large and expensive additions and improvements to the old track and road-bed have been undertaken and carried out, and real estate purchased in its name; and that your orators and other parties in good faith and for a valuable consideration, and without notice or suspicion of any adverse claims whatever, have invested more than $800,000 of money in the stock and bonds of the said Washington, Alexandria, and Georgetown Railroad Company, which were sold in the public markets of New York, Baltimore, and other places.

And your orators further show that, on or about the 10th October, 1865, Robert W. Latham, Frederick P. Stanton, Leonard Huyck, Joseph B. Stewart, and Sam. M. Shoemaker, defendants herein, were duly elected directors of the said Washington, Alexandria, and Georgetown Railroad Company to serve for one year and until their successors were elected; that, on the 5th May, 1866, Oscar A. Stevens, defendant herein, was elected in place of said Stanton, who resigned, and that, on the 15th June, 1866, J. Dean Smith, defendant herein, was elected in place of said Huyck, and in the same month the said Shoemaker was elected treasurer of said company in place of the said Huyck.

And your orators, on information and belief, aver and charge
70 that all of the said defendants, from the time of their respective elections as aforesaid, accepted the said trust and offices to which they were respectively elected, entered upon the discharge of their said

duties, and have continued to be and act as directors of said road down to the present time, except as hereinafter stated.

And your orators further show that, on or about the month of April, 1866, James S. French, claiming to be the president of the Alexandria and Washington Railroad Company, filed in the circuit court for Alexandria County, State of Virginia, a bill in the name of the last said corporation against the Washington, Alexandria, and Georgetown Railroad Company and others, wherein it was claimed that the last-named corporation had no legal existance; that the proceedings substituting the said Stewart as trustee in lieu of the said Lenox were fraudulent, null, and void; and that, therefore, the said original corporation was entitled to have, enjoy, and possess its road and franchises as if said sale had not taken place, and praying an account of the earnings, the appointment of a receiver, the cancellation of Stewart's deed, and general relief; and of this suit the board of directors of the Washington, Alexandria, and Georgetown Railroad had notice, and on the 21st of May, 1866, the said company filed their answer to said bill, denying all the equities of said bill, and affirming the validity of its organization and setting up substantial defences to said action.

And your orators further show that, on the 5th May, 1866, the defendants Stevens and Phelps, obtained from the board of dicectors a pretended lease of the whole railroad for ten years upon terms the most favorable to them and the most prejudical to the company; that the said Stevens and Phelps took possession of the said road and its property under said lease and so continued to possess the same in the District of Columbia, until the 2d June, 1867, and in the State of Virginia until the 19th August, 1868, at which dates possession was taken from them by receivers appointed at the suit of stockholders; and that said Shoemaker, as a director, signed said lease which has since been declared void by the court of appeals of the State of Virginia in a suit brought
to annul the same by Joseph Davison, a stockholder, in be-
71 half of himself and all the other stockholders, against the said lessees and others; that, on the 18th June, 1866, the said Adams Express Company became the assignee of said pretended lease.

And your orators further avers that, previous to and after his election as a director in May, 1866, the said J. Dean Smith, who is an attorney at law, was retained, and acted during the whole of said year as the attorney of your complainant, the said National Exchange Bank, in and about the ownership of one thousand shares of the capital stock of the said Washington, Alexandria, and Georgetown Railroad Company, the certificate for which was issued in the name of Leonard Huyck, but of which the said bank was the lawful owner, having acquired the same in good faith and for a valuable consideration with the usual power of attorney, authorizing its transfer, and that on the 14th August, 1866, the board of directors of said last-named corporation, recognized the ownership of your orators, the said bank, and directed that a new certificate therefor should issue in the name of D. Miller, its then president, but which new certificate has never been issued.

And your orators further charge that, in addition to his obligation to his said company as director, and to the said bank as its attorney, the said Dean Smith was the attorney and solicitor of the said Washington, Alexandria, and Georgetown Railroad Company in reference to the suit brought by French, with power to settle or compromise the same in his discretion, as appears by a resolution of the board of directors, passed

about September 22d, 1866, a copy whereof, when filed, is prayed to be taken as a part hereof.

And your orators further charge that, in addition to his obligation to said Washington, Alexandria, and Georgetown Railroad Company as director, the said Shoemaker was treasurer of said corporation, receiving large sums of money, the earnings of said road, from the 14th June, 1866, and during all the time the said lessees held possession as aforesaid, of which he has never rendered any account to said company as far as these orators are advised; and the said Stevens, together with the said Phelps, was also a lessee in possession, under the title of said corporation, and as such, receiving pay from the earnings of said road.

72 And your orators, on information and belief, charge that, in all the month of November and December, 1866, the said Shoemaker, the said Smith, and the said Stevens, and the said Phelps held and occupied their respective fiduciary relations to their said corporations as hereinbefore charged, and as such directors, officers, attorney, and solicitor, and lessees, respectively, were bound faithfully to discharge the duties of their respective positions towards the said corporation; that the said obligation and duty of the said last-named four defendants were to defeat, by all proper means, if possible, the adverse suit of the said French, carried on in the name of the original corporation as aforesaid, and in no way to give encouragement or aid to the same.

But your orators, on information and belief, further charge that the said defendants seeing the great value of the property and franchises in possession of the Washington, Alexandria, and Georgetown, which forms the only through railroad connection north and south, east of the Alleghany Mountains, and which is estimated to be worth more than $800,000, conceived the object and intention to appropriate the name to their own use; that the said Shoemaker, the said Stevens, and the said Dean Smith, constituting a majority of the board of directors as aforesaid, owned collectively only 27 shares out of a capital stock of 5,000 shares; and that, in furtherance of the intention and object as aforesaid, and while directors as aforesaid, combined and confederated together to betray their trusts as aforesaid.

And your orators, without setting forth particularly each and every act that proved this unjust and illegal combination, on information and belief, charge that, in the month of November, 1866, while holding possession of the road as aforesaid, and claiming to act, and acting as directors and officers as aforesaid, the said Shoemaker, the said J. Dean Smith, and the said Stevens, and the said Phelps entered into negotiations with the said James S. French, prosecuting the aforesaid suit as president, and in the name of the Alexandria and Washington Railroad Company, and claiming to own three-fourths of its capital stock and franchises, and with one Walter Lenox, a defendant in said suit, and claiming to own the remaining fourth of the stock and franchises of the said original corporations by which it was proposed that the said

73 Shoemaker would advance means to enable the said French to carry on the suits so instituted as aforesaid, and that in the event of success, which could only be obtained by the destruction of the corporation which said named defendants represented as directors, attorneys, and lessees, that the stock of the said original corporation, or of a new corporation, if they should organize one, and assign to it the said railroad and its franchises and property should be divided in 3,000 shares, representing $30,000 of capital and distributed as follows:

James S. French	900
Walter Lenox	350
Oscar A. Stevens and J. S. Phelps	850
J. Dean Smith	200
Sam. M. Shoemaker	500
G. W. Brent, the attorney for the said French	200
	3,000

And it was further proposed that the said Stevens and said Phelps should surrender to the new parties in interest the said lease; that the revenue and earnings should go into the hands of the said Shoemaker to reimburse him for his advances under the said agreement, except 20 per cent., which should be distributed among the parties to the agreement.

And your orators further, on information and belief, charge that a written contract embodying the said negotiations, modified and varied to suit all the parties thereto, except the said French, was drawn up about the same time, and was executed previous to Jan., 1867, by all the parties thereto except the said French, who remained absent from Alexandria until the months of January and February, 1867, and who, on his return, raised certain objections to the form of certain stipulations of said contract, but who did not repudiate, but adhered to what he claimed was the November agreement, and that the negotiations continued until the day of December, 1867, when the said French subscribed the same in the same form as first drawn up and signed by the above parties as aforesaid.

And your orators further charge that they are unable at this time
74 to annex a copy of said agreement to this bill for the reason that the defendant, the said Shoemaker, has the same in his possession and refuses to produce it when called on.

And your orator further avers that, from the month of November, 1865, when this negotiation commenced, down to the present time, the said defendants, directors of the Washington, Alexandria, and Georgetown Railroad Company have designedly omitted to use any efforts to oppose the suit instituted by the said French as aforesaid; that no testimony therein has been adduced, or other step taken, by the said Washington, Alexandria, and Georgetown Railroad Company; and that certain of the stockholders thereof, finding that their board of directors had failed to defend the same, were compelled, in November, 1867, to file their petition to be a made parties, which was accordingly ordered to be done, but which was not done until their voluntary appearance in May, 1868.

And your orators, on information and belief, charge that neither the said Shoemaker nor the said Smith nor the said Stevens and Phelps ever paid any consideration to the said French and Lenox for the 1,550 shares of stock assigned to them as aforesaid, except the understanding and agreement to aid him, the said French and the said Lenox, in the prosecution of their claim against the corporation whose directors, attorneys, and agents they were; that subsequently the said Shoemaker, on or about September, 1867, paid the said Lenox a small sum of money, the exact amount whereof is not known, except as stated in his assignment hereinafter referred to, for his entire interest in said original corporation; and, on the day that the said French signed the said agree

ment, the said Shoemaker loaned the said French the sum of $5,000, payable on demand.

And your orators further aver that, on the said day of December, 1867, at the time of the signing of the said agreement by the said French, he, the said French, executed the assignment, a copy whereof, marked Exhibit "G," is hereunto annexed, for the purpose and consideration therein expressed; and that, on the day of September, 1867, the said Lenox executed an assignment of all his interest in the said original corporation to the said Shoemaker, a copy whereof, marked Exhibit "H," is hereunto annexed.

75 And your orators, on information and belief, charge that, at the time of payment by the said Shoemaker to the said French and the said Lenox of the sums of money loaned and paid to them, respectively, he, the said Shoemaker, was a director and the treasurer of the said Washington, Alexandria, and Georgetown Railroad Company, and as such treasurer had received large sums of money belonging to it, for which he had not accounted.

And your orators aver and charge that, by reason of the premises, the legal title of all the stock, property, and franchises of the Alexandria and Washington Railroad that may have been vested in French and Lenox, if any such title existed in them, has passed to the said Shoemaker, and neither he nor any of the parties for whom he holds the same in trust as aforesaid, are entitled, in good faith or in equity, to assert or set up the same against the said Washington, Alexandria, and Georgetown Railroad Company, or the stockholders thereof.

And your orators are advised and charge that the said assignments of the said French and the said Lenox to the said Shoemaker, and the record thereof, are a cloud upon the title of your orators to their stock in the said Washington, Alexandria, and Georgetown Railroad Company, and upon the title, legality, and existence of the last said corporation itself, and as such cannot, in equity and good conscience, be set up against it or your orators; but the said Shoemaker does so set it up.

And your orators charge that they make the said Washington, Alexandria, and Georgetown Railroad Company defendant herein for the reason that the directors thereof are parties defendants herein, claiming adversely to said corporation as hereinbefore set forth; and Adams Express Company are made defendants because it claims some adverse interest to your orators in the premises and under said assignments and contracts, with full notice in the said premises.

And your orators aver and charge that they have reason to fear that the defendants, or some of them, may assign to parties, without notice and for a valuable consideration, their pretended claims in the premises.

Inasmuch as your orators are remediless at law in the premises, and can only obtain relief in equity;

To the end that the defendants may answer, each and all, the allegations herein contained; that they may discover particularly all

76 their dealings with the said French and the said Lenox relative to the said Alexandria and Washington Railroad Company, or its pretended property, stock, and franchises, specifying dates and full particulars; that forthwith an injunction may issue, restraining the said Shoemaker, the said J. Dean Smith, the said Stevens, and the said Phelps, the said Adams Express Company, and the agents and attorneys of them or either of them, from assigning, transferring, hypothicating, or conveying in any manner any rights or interest they or either of them may have or pretend to have to or upon the stock, property,

rights, and franchises of the said original corporation, called the Alexandria and Washington Railroad Company, pretended and claimed by the said French to be still in existence as aforesaid; that the said Shoemaker and the said Adams Express Company, the said Stevens, the said Phelps, and the said Dean Smith, may be enjoined and restrained from aiding or abetting, or from prosecuting the said suit against the Washington, Alexandria, and Georgetown Railroad Company now pending, as aforesaid, in the circuit court of the county of Alexandria, State of Virginia, or any other suit or action or appeal whereby it may be maintained or claimed that the same has no valid legal existence, or that the said original corporation, called the Alexandria and Washington Railroad Company, is not dissolved and merged in the existence of of the said Washington, Georgetown, and Alexandria Railroad Company; that the said Shoemaker, as the holder of the legal title pretended and set up by said Lenox and by the said French as aforesaid, and all persons claiming, or to claim, by, through, or under him as cestuique trustent, assigns, or in any other manner or character, be enjoined and restrained from asserting or claiming against the Wash., Alex., and Geo'tw'n R. R. Co., or its stockholders, or any person claiming by or through it, that the same has not lawfully succeeded to all the right, property, and franchises of the said original corporation, called the Alexandria and Washington Railroad Company, and is not entitled to the enjoyment and possession of all its property and franchises; and that the said Shoemaker and the defendants be directed and ordered to execute and acknowledge all proper assurances, assignments, and conveyances necessary and proper to the full protection of your orators
77 in the premises; and that they have leave from time to time to apply for such interlocutory and further orders as they may be advised may be necessary; that the said Shoemaker, the said Stevens, and the said Smith be enjoined and restrained from further acting as directors of the said corporation called the Washington, Alexandria, and Georgetown Railroad Company; and that the said Smith be restrained from further acting as its attorney or solicitor in and about the said suit instituted by the said French as aforesaid; that the said Shoemaker be required to show what sums of money he has received since his appointment as treasurer of said last said corporation from the earnings of its said road, together with the dates of such receipts, and what sums he has paid out by order of the last said corporation; and that, on the final hearing, *that* the injunction hereinbefore prayed may be made perpetual, and your orators may have such other or further or general relief as the nature of the case may require.

May it please your honor forthwith to grant unto your orators the State's writ of injunction, enjoining and restraining the said defendants and each of them, as hereinbefore prayed, until the further order of the court;

And an order of publication, giving notice to Oscar M. Stevens, James S. French, G. W. Brent, and Walter Lenox, and the Washington and Georgetown Railroad Company, defendants herein, who are non-residents, as before stated, of the substance and object of this bill, and warning them to appear in this court, in person or by solicitor, on or before a certain day to be therein named, to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed:

And also a writ of subpœna against Samuel M. Shoemaker, J. Dean Smith, and W. J. Phelps, residents of Baltimore City, commanding

them to appear in this court, at some certain day to be therein named, to answer the premises and abide by and perform such decree as may be passed therein, and as in duty, &c.

78 EXHIBIT A.—ALEXANDRIA AND WASHINGTON RAILROAD COMPANY.

Acts of the General Assembly of the State of Virginia.

CHAPTER LXIII.

An act to incorporate a company, to construct, on the plan of James S. French, a railroad between Alexandria and Washington City. Passed February 27, 1854.

1. *Be it enacted by the general assembly*, That it shall be lawful to open books of subscription at the city of Alexandria, under the direction of James S. French, John W. Maury, A. J. Marshall, Cornelius Boyle, George French, Edgar Snowden, and R. W. Latham, or any two of them, and at such other places, under the direction of such agents as a majority of the above-named commissioners may appoint, for the purpose of receiving subscriptions to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock for constructing and operating a railroad, on the plan of James S. French, as set forth in the report of the committee of the house of delegates, document No. 65, session 1850–'51, from the city of Alexandria, in the State of Virginia, to the city of Washington, in the District of Columbia, crossing the Potomac at some eligible point between the two cities.

2. Whenever two thousand shares shall have been subscribed, the subscribers, their executors and assigns, shall be and are hereby declared and constituted a body politic and corporate, under the name and style of "The Alexandria and Washington Railroad Company," and shall be subject to all the provisions of the code of Virginia applicable thereto.

3. *Provided*, That it shall not be lawful for said company to connect with any other railroad terminating within the corporate limits of the city of Alexandria, without the consent of the city councils thereof; and further, that the said company shall not permit the said road to pass into the exclusive possession of any corporation without the limits of the Commonwealth of Virginia: *and provided, further*, That the
79 said road will be finished within five years from the commencement of the work.

4. This act shall be in force from its passage, and the term of two years shall be allowed to commence the road.

EXHIBIT B.

An act to authorize the Alexandria and Washington Railroad Company to issue coupon bonds. Passed February 27, 1856.

1. *Be it enacted by the general assembly*, That the Alexandria and Washington Railroad Company, for the purpose of completing their road, be, and they are hereby, authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per centum per annum, to be paid semi-annually.

2. This act shall be in force from its passage.

EXHIBIT C.

VIRGINIA.—Pleas at the court-house of the county of Alexandria before the county court of said county, on Monday, the 3d day of February, 1862.

Be it remembered that, on this day, to wit, the 3d day of February, 1862, came Joseph Davison, by his attorney, and preferred a petition in the words and figures following, to wit:

"To the honorable judges of the county court for the county of Alexandria, State of Virginia:

"Your petitioner, Joseph Davison, of the city of Washington, District of Columbia, respectfully states that he is the lawful agent and attorney-in-fact, of all the bonds and bondholders, issued by the Alexandria and Washington Railroad Company, by authority of a special act of the Virginia legislature, and secured by a deed of trust, executed by the president and directors of said road to Walter Lenox, as trustee, dated the 16th day of July, 1857, a copy of which is herewith exhibited, and made part hereof.

80 "Your petitioner further states that the said Walter Lenox has become wholly incapacitated for the exercise and performance of said trust, and that for many reasons it is important to the interests and rights of said bondholders, that the vacancy created in said trust by the abandonment of the same by the said Lenox, should be filled as therein provided, and makes this petition in that behalf.

"Your petitioner further states that he has made diligent search and enquiry for the president, or some authorized director or officer of said railroad company, to whom to give notice of this application, but that he can find no such person, and is informed and believes that the president and corporators of the said road have abandoned the franchises of the same, and gone beyond the jurisdiction of this honorable court.

"To the end, therefore, of protecting the interests and rights of the said bondholders, and preserving the trust in their behalf created and provided, your petitioner prays that Joseph B. Stewart, attorney at law, of Washington, D. C., be appointed and created trustee in said deed of trust, in the place and in the stead of the said Lenox, by order of this honorable court, and thereby empowered to do and perform all and singular, the matters and duties therein designated and enjoined, and for such your petitioner will ever pray.

"JOSEPH DAVISON.

"Sworn to before me in open court, this 3d day of February, 1862.

"JEFFERSON TACEY, *Clerk.*"

Deed of trust.—Document B in report of sale.

Alexandria and Washington Railroad Company to Walter Lenox.

Deed trust, recorded 25th July, 1857, in Liber J. A. S., No. 138, folio 327, &c.

This indenture, made this 16th day of July, 1857, between the Alexandria and Washington Railroad Company, a company duly incorporated by an act of the general assembly of Virginia, of the first part, and Walter Lenox, of the city of Washington and District of Columbia, of the second part.

81 Whereas, by an act of the General Assembly of Virginia, passed

on the 27th day of February, 1856, the said Alexandria and Washington Railroad Company were authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent. per annum;

And whereas, at a general meeting of the stockholders of said company, held on the 15th day of July, 1857, the president and directors of the company, under the authority of said act, were authorized and directed, at such time or times hereafter as they may deem expedient, to issue the bonds of the company, with coupons annexed, to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be payable semi-annually in the city of New York, and the principal to be payable at such time and place as the board may deem best for the interest of the company; and did further direct the board of directors to execute a mortgage or deed of trust on the property and franchises of the company, to secure the payment of the principal and interest of said bonds, and to sell the said bonds to raise money for the use of the said company.

And whereas the said president and directors, pursuant to the power and authority vested in them as aforesaid, have caused to be executed the bonds of the said company, bearing date on the 22d of July, 1857, which bonds are thirty in number, and are numbered from one to thirty, inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars; and which said bonds are to be severally authenticated by a certificate endorsed or signed by a party of the second part, and are payable to Walter Lenox or bearer, in the city of New York, on the 22d day of July, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the 22d day of January, and on the 22d day of July of each year, at the Bank of Commerce, in New York, on the presentation and delivery of the interest coupons annexed to said bonds, signed by the treasurer of the company. The payment of which bonds, and the interest thereon, the said company desire to secure according to the tenor of the said bonds respectively.

82 Now this indenture witnesseth: That the said Alexandria and Washington Railroad Company, in consideration of the premises aforesaid, and of ten dollars to the company in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, assigned, and set over, conveyed and confirmed, and do by these presents, grant, bargain, and sell, assign, set over, convey and confirm unto the said party of the second part, his successors in the trust hereby created, and his or their assigns, all the railroad of said company made or to be made between its terminus in the city of Alexandria, and State of Virginia, the depot of the Baltimore and Ohio Railroad Company, in the city of Washington, in the District of Columbia, together with the franchises of said company, and all the property, rights, and privileges of the company pertaining thereto; to have and to hold the same, and every part thereof, unto the said party of the second part, his successors in said trust, and his or their assigns forever; upon trust, however, for the following uses, intents, and purposes, and none other—that is to say, the said company shall remain in quiet and peaceable possession of the said railroad, and all the property, rights, privileges, and franchises above mentioned, and shall have control, management, and use of the same, with the income and profits thereof. But in the event said company shall fail to pay the interest on said bonds, so that there shall be at any time six months'

interest wholly due and unpaid, or in case of failure to pay the principal and interest of said bonds, and interest for the period of six months after the said bonds shall have become due and payable, according to the tenor thereof, and payment be demanded, then, or in either case, the said trustee, or his successors of *at* this trust, shall, upon the request in writing of the holders of at least three-fifths of said bonds, cause the aforesaid premises, and the property hereby conveyed, or so much and such parts thereof as may be necessary for the purpose, to be sold at public auction, to the highest bidder, for ready money, in the city of Alexandria, after giving at least sixty days' notice of the time, place, and terms of sale in newspapers published in each of the cities of Alexandria, Washington, and New York, and shall convey the same
83 to the purchaser or purchasers thereof, and shall apply the proceeds of such sale, (after deducting the expenses of sale, and the costs and charges attending the execution of this trust, including such compensation to the trustee as is usually allowed by the judge of the circuit superior court of law and chancery for Alexandria County in trust deeds,) in discharge of the principal and interest upon said bonds, or such of them as may then be due and outstanding, and the residue thereof to the parties of the first part or their assigns. But if the party of the first part shall well and truly pay the semi-annual interest on said bonds, as the same may become due and payable, and is demanded of, and shall also pay and discharge the principal of said bonds when the same becomes payable according to the tenor thereof, and is demanded, then this indenture to be void; otherwise to remain in full force.

And it is mutually agreed that in case of the death, incapacity, or resignation of the party of the second part, or of his successors in this trust, then the office of trustee filled by him shall become vacant, and such vacancy shall be filled by an appointment to be made by any court of record in the county of Alexandria, on the application of the parties of the first part, or of the holders of three-fifths of said bonds: *Provided, however*, in the last case, notice of the application of the parties making such request be given to the president or one of the directors of said company, and all the rights, power, and authority hereby conferred on the original trustee shall then and there devolve upon and be invested in his successor or successors so appointed.

And it is further agreed, that the said party of the second part, and his successors in said trust, shall be accountable for reasonable diligence only in the management thereof, and shall not be responsible for the acts of any agent employed by him or them when such agent is selected with reasonable discretion. This conveyance is made to secure the payment of the thirty bonds aforesaid, for one thousand dollars each, numbered as aforesaid, with the semi-annual interest, and takes precedence as a security over any conveyance which may be made to secure the remaining sum of seventy thousand dollars, for which the company are authorized to issue their bonds, or any portion thereof; but is subject, however, to a deed of trust issued by the said Alexandria and Washington Railroad Company to Joseph H. Bradley and
84 A. Thomas Bradley, of *Waehingty* City, dated the 19th day of April, 1855, and duly of record in the land records of Washington County, in the District of Columbia, and in the county court of Alexandria County, in the State of Virginia, conveying the said road, with all its rights, franchises and property to the said trustees, to secure the payment of the principal and interest of sixty thousand dollars in the bonds of the company, guaranteed by the city of Washington.

And it is hereby agreed that the existing lien to the city of Washington for sixty thousand dollars shall retain its priority over this deed, and be subject to any change or modification which may be agreed upon by the said city and railroad company, or a new lien, in place of the existing one, to the city of Washington, to the extent of sixty thousand dollars, may be made in the said railroad company, which shall retain its priority over its deed of this deed of trust made to secure thirty thousand dollars in the bonds of the company.

In testimony whereof the said party of the first part have caused this indenture to be signed by their president, and the corporate seal of said company to be hereto affixed; and the party of the second part has hereto set his hand and seal the day and year first above written.

ALEXANDRIA AND WASHINGTON RAILROAD COMPANY. } JAMES S. FRENCH,
President A. & W. R. R. Co.
WALTER LENOX, [SEAL.]
Trustee.

Signed, sealed, and delivered in presence of—
F. I. MURPHEY,
J. H. GODDARD.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, will book No. 8, page 117, and examined and delivered.

J. TACEY, *Clerk.*

At a meeting of the board of directors of the Alexandria and Washington Railroad Company, held in their office in the city of Alex-
85 andria, on the 15th day of July, 1857, Benjamin Hallowell was called to the chair, and R. M. Smith was appointed secretary. A draft of a deed of trust from this company to Walter Lenox, bearing date the day of July, 1857, which, when executed, will convey to the said Walter Lenox the railroad property and franchises of the company, to secure the payment of the coupon bonds of the company to the amount of thirty thousand dollars, and the semi-annual interest thereon at the rate of seven per cent. per annum, with power to the said Lenox upon certain contingencies therein mentioned, to take possession of and sell the property conveyed, was submitted to the board, and, on motion, it was unanimously resolved that the board approve the said draft, and do hereby authorize the president to execute the same, by signing his name, and affixing the corporate seal of the company thereto, and to acknowledge the same when so executed as the act and deed of the company; the same being done in conformity with the resolution adopted on the 15th day of July, 1857, by the stockholders of said company, as appears from the minutes of their meeting.

BENJAMIN HALLOWELL,
Chairman.

A copy from the minutes.

R. M. SMITH, *Secretary.*

DISTRICT OF COLUMBIA,
County of Washington, to wit:

Be it remembered that, on this 25th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, before the sub-

scribers, two justices of the peace in and for the county of Washington aforesaid, personally appears James S. French, president of the Alexandria and Washington Railroad Company, and acknowledges the foregoing deed of trust or instrument of writing to be the act and deed of the Alexandria and Washington Railroad Company, delivered for the use and purposes therein expressed.

Given under our hands and seals the day and year first hereinbefore written.

J. H. GODDARD, *J. P.* [SEAL.]
F. I. MURPHY, *J. P.* [SEAL.]

True copy. Test:

JOHN A. SMITH, *Clerk.*

86 *Deed from Stewart to Hay and Thornton.*

This indenture, made this fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two, between Joseph B. Stewart, of the city of Washington, District of Columbia, of the one part, and Alexander Hay, of the city of Philadelphia, State of Pennsylvania, and Joseph Thornton, of Montreal, Canada, of the other part: Whereas, the Alexandria and Washington Railroad Company, being duly incorporated by the State of Virginia, by order of its incorporators and directors, acting under its corporate authority and seal, through James S. French, the president of the same, executed a certain deed of trust, bearing date the sixteenth day of July, eighteen hundred and sixty-seven, recorded in the clerk's office of the county of Alexandria, State of Virginia, and in the clerk's office for the county of Washington, District of Columbia, did grant, bargain, sell, and convey to one Walter Lenox, of the said city of Washington, all and every part of their said railroad belonging to said company, lying and being partly in the county of Alexandria, State of Virginia, and partly in the city of Washington, District of Columbia, and extending from its terminus in the city of Alexandria to the depot of the Baltimore and Ohio Railroad in the city of Washington, and in the district aforesaid, together with all the franchises of said company, and all the property, rights, and privileges of the company pertaining thereto; to have and to hold the same to the said Walter Lenox, or his successors in said deed of trust, and to his or their assigns forever, upon trust, however, for the following uses, intents, and purposes, that is to say: the said company by virtue of a certain act of the legislature of the State of Virginia, dated the twenty-seventh day of February, eighteen hundred and fifty-six, were authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent.; and whereas, at a general meeting of the stockholders of said company, held on the fifteenth day of July, eighteen hundred ond fifty-seven, the president and directors of said company,

87 under the authority of said act, were authorized and directed, at such time or times thereafter as they might deem expedient, to issue the bonds of said company, with coupons annexed, to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be paid semi-annually in the city of New York, and did authorize the president and board of directors to execute said mortgage or deed of trust on the property and franchises of the said company, to secure the principal and interest of said bonds, and to sell the

said bonds to raise money for the use of said company; and whereas, as the said president and directors, pursuant to the power and authority in them so vested as aforesaid, did cause to be executed the bonds of the said company, bearing date on the twenty-second day of July, eighteen hundred and fifty-seven, which bonds were thirty in number, and were and are numbered from one to thirty, inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars, and which bonds were so executed, payable to Walter Lenox, or bearer, in the city of New York, on the twenty-second day of July, eighteen hundred and seventy-seven, with interest at seven per cent. payable semi-annually, on the twenty-second day of January, and on the twenty-second day of July of each year, at the Bank of Commerce, in the city of New York, on the presentation and delivery of the interest coupons to said bonds annexed, signed by the treasurer of said company, which were so signed, and the payment of the said interest coupons, as well as the principal of the same, was to be secured by said deed of trust so executed as aforesaid, and being so issued and secured, were, by the said president of the said railroad company, sold and delivered to Benjamin Thornton, of England, who was thereby lawfully invested with the fee simple right to said thirty thousand dollars in bonds, and the interest thereon, at the rate of seven per cent. as aforesaid; and whereas, it was stipulated, among other things, that, in the event the said company should at any time fail to pay the interest on said bonds, so that there should be at any time six months' interest wholly due and unpaid, or in case of failure to pay the principal and interest of said bonds for the period of six months after the said bonds shall become due and payable, according to the tenor
88 thereof, and payment be demanded, then, or in either case, the said trustee, or his successor, were authorized, upon the request in writing of the holders of three-fifths of said bonds, to cause the said property and franchises of the said railroad company to be sold at public auction to the highest bidder, for ready money, in the city of Alexandria, after giving sixty days' notice of the time and place of sale, in newspapers published in each of the cities of Alexandria, Washington City, and the city of New York, and should convey the same to the purchaser or purchasers thereof, and apply the proceeds of such sale in the discharge of the principal and interest of said bonds; and whereas, it was stipulated that in case of the death, incapacity, or resignation of the said Lenox, or of his successors in the said trust, that his place should be filled by an appointment to be made by any court of record of Alexandria County on the application of the holders of three-fifths of said bonds, and that notice of such application should be given to the president or one of the directors of said company, and that the trustee so appointed should exercise all the power and perform all the duties vested in said Lenox by virtue of said trust aforesaid; and whereas, default was made by the said Alexandria and Washington Railroad Company in the payment of the semi-annual interest on said thirty thousand dollars of coupon bonds, though due, demand and application was made on the part of the holders of said coupons on or after the twenty-second day of January and twenty-second day of July, of the year eighteen hundred and fifty-eight, and eighteen hundred and fifty-nine, and eighteen hundred and sixty, and eighteen hundred and sixty-one, and until January, eighteen hundred and sixty-two, consecutively, at the Bank of Commerce, in the city of New York, the times and place designated in said deed of trust for the payment of the said interest coupons; but the said coupons, nor any part of the same, or of

the interest due thereon, was not paid or tendered then, or subsequently, by said railroad company, or by any one acting for or in their behalf, but, on the contrary, made default, and failed to pay the said instalments of interest or any one of them; and whereas, the said Walter Lenox, as trustee aforesaid, did become incapacitated for the performance of said trust—he having abandoned the same and removed
89 from his said residence in the city of Washington, and is now engaged in acts of hostility against the Government of the United States—it became necessary to fill the said trusteeship so made vacant as provided in said deed of trust; and whereas Joseph Davison, of the city of Washington, the attorney-in-fact and agent of the said Benjamin Thornton, and assigns, and each and every of the said thirty thousand dollars of bonds and coupons thereto annexed, after seeking for said Lenox, as trustee aforesaid, and for James S. French, the president of said company, and for some one of the directors of the same, to whom to give notice, but was able to find no such person, did petition the honorable county court of the county of Alexandria, being a court of record, for the appointment of a trustee to fill the said trusteeship so made vacant, whereupon the said county court made the following order and appointment, to wit:

"At a term of the county court of Alexandria County, Virginia, held in the court-house of said county, this third day of February, the following order was entered as a part of the proceedings of the court:

"It appearing to the court from sufficient evidence this day produced, that Walter Lenox, the trustee named in a certain deed of trust bearing date the 16th day of July, 1857, executed by the Alexandria and Washington Railroad Company to the said Lenox for the security of $30,000 of the coupon bonds of the said company, and for other purposes therein mentioned, has become and is wholly incapacitated for executing the said trusts, or guarding the rights therein provided and created, the court is of the opinion, and so declares, that the trusteeship in said deed of trust has become vacant; and on the application of Joseph Davison, the attorney-in-fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, of the city of Washington, as trustee in the place of the said Walter Lenox, and the said Stewart having this day accepted said trust in open court, he is substituted to all the rights, privileges, duties, and responsibilities of the said Lenox, as trustee under and by virtue of said deed of trust.

90 "A true copy from the minutes.

"Given under my hand and seal of the county court of Alexandria County, this 3d day of February, A. D. 1862.

"Teste:

[SEAL.] (Signed) "JEFFERSON TACEY, *Clerk.*"

And whereas the said Davison, as attorney and agent aforesaid, did, as the representative of more than three-fifths of said bonds, and of the coupons aforesaid, by his written order, dated the 4th day of February, 1862, request the said Stewart, so appointed trustee as aforesaid, to proceed to advertise the said Alexandria and Washington Railroad for sale according to the terms, conditions, and covenants of the said deed of trust for the payment of said coupon bonds, and the interest so unpaid, and in arrears for more than six months; and whereas I, Joseph B. Stewart, aforesaid, as such trustee, did cause to be duly advertised for sale the whole of the said Alexandria and Washington Railroad, including the franchises, and all and singular the structure

and property thereto belonging, (the engines, rolling stock, and moveable property all having been taken away by persons unknown,) which said advertisement was published and inserted for a period of sixty days previous to the tenth day of April, 1862, in the "Local News," a newspaper published in the city of Alexandria, the "National Intelligencer," a newspaper published in Washington City, and in the "New York Herald," a newspaper published in the city of New York, giving due notice of the time and place, and terms of sale—that is to say, the said sale to take place on the tenth day of April, 1862, at 12 o'clock meridian, in front of the mayor's office, in the said city of Alexandria as aforesaid, all of which will more fully appear by reference to my report of sale, dated the tenth day of April, after the same was consummated; and whereas, on the tenth day of April aforesaid, and pursuant to said sixty days' notice and advertisement as aforesaid, and at the time and place aforesaid, and in obedience to my duty and authority as trustee, as aforesaid, and after publicly proclaiming my authority and
91 purpose to sell said road, and exhibiting the order of the honorable county court of the county of Alexandria aforesaid, appointing me such trustee, and otherwise making known the object and purpose of said sale, I did then and there publicly offer the said road, with its rights of way, estate, franchises, and appurtenances, for sale to the highest bidder, for ready money, and, after crying the same upon several successive bids, it was struck off to Alexander Hay, of the city of Philadelphia, for the sum ot twelve thousand five hundred dollars; and there being no further sum offered, after due warning, I declared the said sale and purchase concluded; and whereas the said Hay has assigned one-half of his said purchase to said Joseph Thornton, and requested that this conveyance shall be made accordingly; and whereas, the said Hay and Thornton have notified me that, meaning to continue as a body corporate and politic, in the exercise of all and singular the rights, privileges, and franchises created and conferred by the charter of the said Alexandria and Washington Railroad Company, and have selected and so designated, for the future name and style of the said corporation and company, so continued and renewed, that of "The Washington, Alexandria, and Georgetown Railroad Company," and have further requested that this conveyance shall likewise operate as a conveyance, in fee simple, to the said company politic and corporate so named, the same is hereby accordingly done and concluded.

Now, therefore, this indenture witnesseth: That for and in consideration of the premises, and of the sum of twelve thousand five hundred dollars, to me in hand paid by the said Alexander Hay and the said Joseph Thornton, in the name and in behalf of the said Washington, Alexandria, and Georgetown Railroad Company, I, the said Joseph B. Stewart, as trustee aforesaid, and by virtue of my authority in the premises mentioned, have granted, bargained, sold, and conveyed, and by these presents do bargain, grant, sell, and convey to the said Hay and Thornton, and to the said Washington, Alexandria and Georgetown Railroad Company, all the road, rights, ways, and franchises of the said Alexandria and Washington Railroad Company, and all and singular the estate, material, and effects of the same, whether real or personal, embraced in and about said road from its terminus in
92 the city of Alexandria, Virginia, to the Baltimore and Ohio Railroad depot, in the city of Washington: To have and to hold them, the said Hay and Thornton, and to the said Washington, Alexandria, and Georgetown Railroad Company, in fee simple, and forever.

In testimony whereof I, the said Joseph B. Stewart, as trustee afore-

said, have hereunto affixed my hand and seal the day and year first above written.

JOSEPH B. STEWART, [L. S.]
Trustee.

Signed, sealed, and delivered in presence of—
THOMAS C. DONN.
F. I. MURPHEY.

STATE OF VIRGINIA,
County of Alexandria, to wit:

I, Robert Bell, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Joseph B. Stewart, trustee, whose name is signed to the writing hereto annexed, bearing date on the fourteenth day of April, 1862, has acknowledged the same before me in my county aforesaid.

Given under my hand this second day of May, in the year 1862.

ROBERT BELL, *J. P.*

DISTRICT OF COLUMBIA,
County of Washington, to wit:

We, Thomas C. Donn and Francis I. Murphey, justices of the peace in and for said county and District aforesaid, do hereby certify that Joseph B. Stewart, party grantor to the foregoing and annexed deed or instrument in writing, bearing date the fourteenth day of April, 1862, personally appeared before us, in our county aforesaid, the said Joseph B. Stewart, being personally well known to us as the person who executed said deed, and acknowledged the same to be his act and deed, for the purposes therein expressed.

Given under our hands and seals this 2d day of May, 1862.

THOMAS C. DONN, *J. P.* [SEAL.]
F. I. MURPHEY, *J. P.* [SEAL.]

93 CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
May 3, 1862.

This deed was received in the office, and, having been acknowledged before justices, admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

A copy. Teste: JEFFERSON TACEY,
Clerk of Alexandria County Court.

EXHIBIT D.

"SECTION 1. *Be it enacted by the general assembly of Virginia*, That the sale of the Alexandria and Washington Railroad, made on the tenth day of April, eighteen hundred and sixty-two, and the purchase of the same by Alexander Hay and his associates, be, and hereby is, made a lawful sale, and shall not in anywise be affected by the law staying the collection of certain debts, passed July 26th, 1861, and amended and re-enacted February 8th, 1862, and extended December 22d, 1862; and said sale shall be deemed valid, of full force and effect, as if said law had never been passed.

"SECTION 2. This act shall be in force from its passage."

Passed February 5, 1863.

EXHIBIT E.

An act to authorize the Washington, Alexandria, and Georgetown Railroad Company to increase its capital stock and funded debt, and for other purposes. Passed January 23, 1864.

1. *Be it enacted by the general assembly*, That it shall be lawful for the Washington, Alexandria, and Georgetown Railroad Company, a corporation lawfully succeeding, by purchase under a deed of trust, to all the franchises, rights, and privileges granted to the "Alexandria and Washington Railroad Company," to increase its capital stock to an amount not exceeding in the aggregate five hundred thousand dollars.

94 2. That it shall also be lawful for said Washington, Alexandria, and Georgetown Railroad Company to issue and sell its bonds, with coupons annexed, at a rate of interest not exceeding seven per centum per annum, to be paid semi-annually, to the amount of two hundred thousand dollars, in addition to the one hundred thousand dollars of bonds authorized to be sold by the Alexandria and Washington Railroad Company by acts of assembly passed February 27th, in the year eighteen hundred and fifty-six.

3. That it shall also be lawful for said Washington, Alexandria, and Georgetown Railroad Company to borrow money upon its promissory notes, duly executed under the authority of its board of directors, to an amount not exceeding one hundred thousand dollars.

4. That so much of an act entitled "An act to incorporate a company to construct, on the plan of James S. French, a railroad between Alexandria and Washington City," passed February 27, 1854, as provides "that the said company shall not permit the said road to pass into the exclusive possession of any corporation without the limits of the Commonwealth of Virginia," is hereby repealed.

5. This act shall be in force from its passage.

EXHIBIT F.

This assignment, made this sixth day of December, A. D. 1867, by and between James S. French, of the town of Alexandria, Virginia, of the one part, and Samuel M. Shoemaker, of the city of Baltimore, Maryland, of the other part, witnesseth:

That in consideration of the payment of five thousand dollars by said Shoemaker to me, the said James S. French, the receipt whereof is hereby acknowledged, I do hereby assign, convey, transfer, and set over unto the said S. M. Shoemaker, or his assigns, all my right, title, interest, claims, and demands whatsoever in and to the property, stock, road, road-bed, franchise, and charter of the corporation known as the Alexandria and Washington Railroad Company, formed under and by authority of an act of assembly of Virginia,

95 passed February 27, 1854, or any interest which I may possess in and to the same or thereunder; and I do further agree to make such other and further conveyance or assurance as may be hereafter required by said Shoemaker or his assigns, the foregoing assignment being for the following purposes, viz:

1st. To secure the payment of five thousand dollars due said Shoemaker as an advance on the same; and

2d. For the purposes and objects set forth in an agreement bearing

even date herewith between said French, Lenox, Shoemaker, Oscar A. Stevens, J. Dean Smith, George W. Brent, and W. Jackson Phelps.

JAMES S. FRENCH.

Witness: J. F. CALLAN, }
as to J. S. FRENCH. }

[Revenue stamp, $5.]

DISTRICT OF COLUMBIA,
Washington County:

I, John F. Callan, a notary public in and for the district and county aforesaid, do hereby certify that James S. French, who signed the foregoing assignment, appeared before me on this 6th day of December, 1867, in the county aforesaid, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this sixth December, 1867.

[SEAL.] JOHN F. CALLAN,
Notary Public.

We, the undersigned, do hereby agree and consent to the terms and conditions of the within assignment.

O. A. STEVENS.	[SEAL.]
W. J. PHELPS.	[SEAL.]
J. DEAN SMITH.	[SEAL.]
GEORGE W'M BRENT.	[SEAL.]
WALTER LENOX.	[SEAL.]

96 VIRGINIA, ALEXANDRIA COUNTY COURT,
Clerk's Office, May 25, 1868.

This assignment was received in the office, and having been acknowledged before a notary public, and having thereon United States internal revenue stamps, properly cancelled, to the amount of five dollars, admitted to record.

Test: J. TACEY, *Clerk.*

A copy. Test: J. TACEY, *Clerk.*

EXHIBIT G.

This indenture, made this 24th day of September, in the year of our Lord one thousand eight hundred and sixty-seven, between Walter Lenox, of Washington City, District of Columbia, of the first part, and Samuel M. Shoemaker, of the city Baltimore, State of Maryland, of the second part, witnesseth:

That the said Walter Lenox, for and in consideration of the sum of twenty-nine hundred dollars in lawful money of the United States, to him in hand paid by the said Samuel M. Shoemaker, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, quitclaimed, and conveyed, and doth by these presents grant, bargain, sell, alien, release, quitclaim, and convey unto the said Samuel M. Shoemaker, all his right, title, and interest, in and to the following property, to wit: The road and road-bed of the Alexandria and Washington Railroad Company, and all his right, title, and interest in and to the franchise and franchises of said comporation, together with all his right, title, and interest of every kind, nature, and description, in and to the buildings of

said corporation, its depots, engine-houses, tank-houses, offices, engines, rolling-stock, works of all kinds and nature, and rights of way, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same, belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise, however, of the said party of the first
97 part, of, in, to, or out of the said described premises." To have and to hold the said property, and premises, and appurtenances, unto the said Samuel M. Shoemaker, his heirs and assigns forever.

In testimony whereof the said Walter Lenox has hereunto set his hand and seal on the day and year first hereinbefore written.

WALTER LENOX. [SEAL.]

Signed, sealed, and delivered in presence of—
W'M H. WARD.
CHARLES WALTER.

[Revenue stamp, $3.]

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Charles Walter, a notary public in and for the county of Washington aforesaid, in the said district, do hereby certify that Walter Lenox, party to a certain deed bearing date on the 24th day of September, and hereunto annexed, personally appeared before me aforesaid, the said Walter Lenox, being personally well to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand, my seal, this 26th day of September, A. D. 1867.

[SEAL.] CHARLES WALTER,
Notary Public.

VIRGINIA, ALEXANDRIA COUNTY COURT,
Clerk's Office, May 25, 1868.

This deed was received in the office, and having been acknowledged before a notary public, and having thereon U. S. internal revenue stamps, properly cancelled, to the amount of three dollars, admitted to record.

Teste: J. TACEY, *Clerk.*

A copy. Teste: J. TACEY, *Clerk.*

[Stamp.]

98 16.

To the Honorable Henry W. Thomas, judge of the circuit court of Alexandria County:

Humbly complaining, showeth unto your honor, James S. French, a stockholder in "The Alexandria and Washington Railroad Company," owning three-fourths of said stock, that in the month of March, 1866, the said company filed a bill in your honorable court against the Washington, Alexandria, and Georgetown Railroad Company, Alexander Hay, J. B. Stewart, & others, the principal object of which was to obtain a restoration of their road, the possession of which had been fraudulently obtained, and was then held by the said Washington,

Alexandria, and Georgetown Railroad Company. In this suit such proceedings were had that, at August term, 1868, a decree was rendered by your honor, establishing the title of the said company to the said road, and ordering and directing its restoration to them, and on the day of September, 1868, the said company were restored to, and put in the possession of, their said road, by virtue of a writ of possession, issued by the clerk of your honorable court, founded upon the decree aforesaid.

The complainants further show that a certain Walter Lenox, being a stockholder in the Alexandria & Washington Railroad Company on the 24th day of September, 1867, assigned and conveyed all his interest in the said road to one Samuel M. Shoemaker, absolutely and un-
99 conditionally, and has now no interest in the said road; that the said assignment, though nominally made to the said Shoemaker, was in fact and in truth made to him for the use and benefit of "The Adams Express Company," whose agent he is; that the said Walter Lenox fraudulently combining and conspiring with the said Samuel M. Shoemaker, and the said Adams Express Company, to injure, embarrass, and annoy the said company in the possession and enjoyment of their said road, under the aforesaid decree of your honorable court, and by indirect means to avoid and set aside the effect of said decree, has, as secretary of the said company, or so styling himself, advertized a general meeting of the stockholders of the Alexandria and Washington Railroad Company, to be held on the 29th day of October, 1868, at "The Mansion House," in the city of Alexandria, at 12 o'clock m., a copy of which, dated September 29th, 1868, is herewith exhibited as a part of this bill, marked A.

Your orator further shows unto your honor that the said Samuel M. Shoemaker, fraudulently obtained from your orator, a certain mortgage which your orator understood to be merely a security for the payment of the sum of $5,000, which said Shoemaker lent to your orator, but which he, the said Shoemaker, fraudulently pretends to be a con-
100 veyance of the right, title, and interest of your orator in and to the Alexandria & Washington Railroad, its property & franchises, for the purposes of a certain agreement, referred to in said mortgage; and your orator shows unto your honor, that it is the purpose and design of said Shoemaker acting in fraudulent concert & combination with the said Walter Lenox & others, under and by virtue of said mortgage, to represent, or cause to be represented, your orator's stock in said railroad, at the meeting aforesaid, to be held at the Mansion House, in the city of Alexandria, Va., on the 29th instant, and by thus representing and voting upon your orator's stock to elect a new board of directors and officers of the said company, to the great damage and irreparable injury of your orator.

And your orator further shows unto your honor that your orator, on the 10th day of October, 1868, tendered to the said Shoemaker the said sum of five thousand dollars, with the interest thereon, to secure which the mortgage aforesaid was made by your orator, and demanded a release of the said mortgage, and a reconveyance of the property therein specified to your orator, which tender and demand were refused by the said Shoemaker.

The complainant avers that the said call for a meeting of the stockholders of the said company, has been made of his own motion, and for his own purposes, by the said Lenox, without authority from the
101 said company, through its board of directors, and that the notice of said meeting is otherwise insufficient, illegal, and void, not

having been advertized for thirty days, as the statute requires, the State Journal, in which it was published, having suspended its publication for a time, and removed to Richmond; that the object for which said meeting is called is, as the complainant is informed, believes, & charges, to carry out the fraudulent combination and conspiracy between the said Lenox and the said Shoemaker, and Adams Express Company, by the election of a new board of directors who will play into their hands, and permit them to obtain possession of the said road, or in some other way defeat the objects & purposes of your honor's decree aforesaid, and thereby greatly *damify* the interests & property of the complainants.

All which actings & doings of the said Walter Lenox, Samuel Shoemaker, and the Adams Express Company, are contrary to equity & good conscience, and tend to the manifest wrong, injury, and oppression of the complainant.

In tender consideration whereof, and inasmuch as the complainant has no remedy in the premises, at law, but can only be relieved by the gracious interposition of your honorable court, where matters of this kind are properly cognizable; and to the end that the said Walter Lenox, Samuel Shoemaker, and the said Adams Express Com-
102 pany may be made parties defendant hereto, and may, on oath, full, true, & perfect answer make to the several allegations hereinbefore set forth, and that they, and all other persons claiming any of the stock of the said Alexandria and Washington Railroad Company, may be restrained and prevented from holding the said meeting, under the notice aforesaid, from electing a new board of directors for said company, or doing any other acts under said notice, and that the said Shoemaker, his agents, or attorneys, may be restrained and enjoined from representing, or causing to be represented, from voting upon, or causing to be voted upon, the stock of your orator, under pretense of authority conferred by the aforesaid mortgage, the complainant prays your honor to grant unto him the Commonwealth's most gracious writ of subpœna, to said defendants directed, &c.

(Signed) JAMES S. FRENCH.

STATE OF VIRGINIA,
County of Alexandria, &c.:

I, Joseph Coulton, a justice of the peace for the county aforesaid, do certify that James S. French, whose name is signed to the foregoing, bill in chancery, this day personally appeared before me, in my county aforesaid, and made oath that all the statements therein made *are*
103 made by him of his own knowledge are true, and all others, he verily believes to be true.

Given under my hand this 28th day of October, A. D. 1868.

(Signed) JOS. COLTON, *J. P.*

An injunction is awarded according to the prayer of the bill, but this order shall not be effective until the complainant shall execute bond, with sufficient security, in the sum of two thousand dollars, conditioned according to law.

(Signed) H. W. THOMAS.

28th Oct'r, 1868.

To the CLERK of the circuit court of Alexandria.

A copy. Teste:

(Signed) J. TRACEY, *Clerk.*

(Indorsed:) A. & W. R. R. Co. to Lenox & al. Bill. Copy. Fee, $1 25.

104 17.—*Rep'n.*

In the circuit court of the United States for the district of Virginia.
In equity.

SAMUEL M. SHOEMAKER
vs.
JAMES S. FRENCH.

The replication of Samuel M. Shoemaker, complainant, to the answer of James S. French, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiency of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GEORGE W. BRENT,
Sol. for Compl't.

105 (Indorsed:) In the circuit court of the United States for the district of Virginia. In equity. Samuel M. Shoemaker vs. James S. French. General replication. Filed Feb'y 10, 1869. W. H. Barry, clerk. Brent & Wattles, sol'r for pl'ff.

106 18.—*Demurrer.*

In the U. S. circuit court for the district of Virginia.

SAMUEL M. SHOEMAKER, COMPL'T,
vs.
JAMES S. FRENCH, DEF'T.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that it appears by the said bill that the same is exhibited by the complainant against the defendant for several distinct matters and causes, and by thus forming distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant be put to unnecessary charges, expenses, &c., &c. Wherefore, and for divers other errors and imperfections apparent on the face of the said bill, this defendant humbly demands the judgment of this honorable court whether he shall be compelled to make any further answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. O. CLAUGHTON.

LAWRENCE B. TAYLOR,
Sol'r for Defendant.

having been advertized for thirty days, as the statute requires, the State Journal, in which it was published, having suspended its publication for a time, and removed to Richmond; that the object for which said meeting is called is, as the complainant is informed, believes, & charges, to carry out the fraudulent combination and conspiracy between the said Lenox and the said Shoemaker, and Adams Express Company, by the election of a new board of directors who will play into their hands, and permit them to obtain possession of the said road, or in some other way defeat the objects & purposes of your honor's decree aforesaid, and thereby greatly *damify* the interests & property of the complainants.

All which actings & doings of the said Walter Lenox, Samuel Shoemaker, and the Adams Express Company, are contrary to equity & good conscience, and tend to the manifest wrong, injury, and oppression of the complainant.

In tender consideration whereof, and inasmuch as the complainant has no remedy in the premises, at law, but can only be relieved by the gracious interposition of your honorable court, where matters of this kind are properly cognizable; and to the end that the said Walter Lenox, Samuel Shoemaker, and the said Adams Express Com-
102 pany may be made parties defendant hereto, and may, on oath, full, true, & perfect answer make to the several allegations hereinbefore set forth, and that they, and all other persons claiming any of the stock of the said Alexandria and Washington Railroad Company, may be restrained and prevented from holding the said meeting, under the notice aforesaid, from electing a new board of directors for said company, or doing any other acts under said notice, and that the said Shoemaker, his agents, or attorneys, may be restrained and enjoined from representing, or causing to be represented, from voting upon, or causing to be voted upon, the stock of your orator, under pretense of authority conferred by the aforesaid mortgage, the complainant prays your honor to grant unto him the Commonwealth's most gracious writ of subpœna, to said defendants directed, &c.

(Signed) JAMES S. FRENCH.

STATE OF VIRGINIA,
County of Alexandria, &c.:

I, Joseph Coulton, a justice of the peace for the county aforesaid, do certify that James S. French, whose name is signed to the foregoing, bill in chancery, this day personally appeared before me, in my county aforesaid, and made oath that all the statements therein made *are*
103 made by him of his own knowledge are true, and all others, he verily believes to be true.

Given under my hand this 28th day of October, A. D. 1868.

(Signed) JOS. COLTON, *J. P.*

An injunction is awarded according to the prayer of the bill, but this order shall not be effective until the complainant shall execute bond, with sufficient security, in the sum of two thousand dollars, conditioned according to law.

(Signed) H. W. THOMAS.

28th Oct'r, 1868.

To the CLERK of the circuit court of Alexandria.

A copy. Teste:

(Signed) J. TRACEY, *Clerk.*

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104 17.—*Rep'n.*

In the circuit court of the United States for the district of Virginia.
In equity.

SAMUEL M. SHOEMAKER
vs.
JAMES S. FRENCH.

The replication of Samuel M. Shoemaker, complainant, to the answer of James S. French, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiency of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GEORGE W. BRENT,
Sol. for Compl't.

105 (Indorsed:) In the circuit court of the United States for the district of Virginia. In equity. Samuel M. Shoemaker vs. James S. French. General replication. Filed Feb'y 10, 1869. W. H. Barry, clerk. Brent & Wattles, sol'r for pl'ff.

106 18.—*Demurrer.*

In the U. S. circuit court for the district of Virginia.

SAMUEL M. SHOEMAKER, COMPL'T,
vs.
JAMES S. FRENCH, DEF'T.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that it appears by the said bill that the same is exhibited by the complainant against the defendant for several distinct matters and causes, and by thus forming distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant be put to unnecessary charges, expenses, &c., &c. Wherefore, and for divers other errors and imperfections apparent on the face of the said bill, this defendant humbly demands the judgment of this honorable court whether he shall be compelled to make any further answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. O. CLAUGHTON.

LAWRENCE B. TAYLOR,
Sol'r for Defendant.

(Indorsed:) Sam'l M. Shoemaker vs. Ja's S. French. Demurrer. In ch'y.

107 19.—*Affidavit of def't.*

S. M. SHOEMAKER
vs.
JA'S S. FRENCH. } In equity.

James S. French, the defendant, makes oath that, at the time of filing his answer in this case, he was not aware of the fact that O. A. Stevens and W. J. Phelps, two of the parties to the agreement set forth in the complainant's bill, had made themselves parties defendants, and filed their answer in a certain case then pending in the circuit court of Alexandria Co., Va., in which the Alexandria and Washington R. R. Co. was complainant, and the Washington, Georgetown, and Alexandria R. R. Co. and others *was* defendants. In their answer the said Stevens and Phelps denied the rights of the said Alexa. & Washington R. R. Co., and resisted the relief sought by them, which action on their part was in direct violation of the agreement aforesaid, which had been executed by them sixty days before the filing of their said answer. The said answer was prepared and filed by R. T. Merrick, esq., as counsel, who was also interested in said agreement, and was in such bad faith and so fraudulent towards this affiant as to justify the recession and an'ulment of the said agreement, as these were some of the parties to whom affiant's stock was to be parcelled out and assigned by the agreement aforesaid. Affiant is advised that the said Phelps, Stevens, and Merrick, together with all the other parties to said agreement, ought to be made parties to this proceeding, which can only be done by means of a cross-bill.

Affiant further states that, since the execution of the aforesaid agreement, the lease mentioned therein, which was to be assigned to the parties thereto, and was a material part of the consideration for the said agreement, has been declared and adjudged by the supreme court
108 of appeals of Va. to be null and void. This fact is stated in affiant's answer, but inasmuch as the said Stevens & Phelps are not parties to the proceeding, affiant is advised that he can only have the benefit of this material fact by means of a cross-bill.

Affiant further states that, of the debts which the complainant in his bill alleges to be owing by the Alexa. and Washington R. R. Co., and which complainant bound himself to pay, not less than $50,000 are held and owned by this affiant, most of them being in the form of judgments. The complainant, therefore, instead of having any right to demand of this affiant the $500 claimed in his bill, ought actually to pay him more than $40,000, according to the terms of the said agreement, if the same is to be set up and enforced. But the complainant has never paid any of said debts, except a few hundred dollars for a lot crossed by the railroad, the title to which the complainant has taken in his own individual name, and therefore cannot claim to have paid as a debt of the railroad co.

This affiant is advised that he cannot take advantage of the foregoing facts, and others of a like character, without making new parties to the proceeding, and also amending his answer. He, therefore, asks leave to amend his answer and to file a cross-bill.

JAMES S. FRENCH.

Sworn & subscribed to before me this 13th day of May, A. D. 1869.
W. H. BARRY, *Clerk.*

(Indorsed:) Sam'l M. Shoemaker vs. James S. French. Pet. to make new parties & file cross-bill. Affidavit of J. S. French. Filed May 13, 1869.

109 20.—*Order for leave to file cross-bill.*

And at another day, to wit, at a circuit court of the United States for the district of Virginia, held on the 12th day of May, 1869:

On motion of the defendant in this cause, by counsel, leave is given to file a cross-bill herein against said complainant, within twenty days from this date.

Filing cross-bill.

Whereupon, on the 31st day of May, 1869, the defendant James S French, by his counsel, filed his cross-bill herein, which said cross-bill and proceedings thereunder are in the words and figures following, to wit:

110 Cross-bill of James S. French vs. Sam'l M. Shoemaker, filed in U. S. circuit court, Richmond, May 28, 1869.

111 *Cross-bill.*

In the circuit court of the United States, for the fourth circuit, district of Virginia.

JAMES S. FRENCH *vs.* SAMUEL M. SHOEMAKER. } Cross-bill.

To the honorable judges of the circuit court of the United States for fourth circuit, district Virginia, sitting in equity:

James S. French, a citizen of the State of Virginia, by leave of the court, brings his cross-bill against Samuel M. Shoemaker, a citizen of the State of Maryland, and thereupon your orator complains, and says:

That heretofore, on the 27th of October, 1868, the said Shoemaker exhibited in this court his original bill of complaint against your orator, setting forth therein the incorporation of the Alexandria and Washington Railroad Company, and the due organization thereof under the laws of Virginia, your orator being the president of said company and the owner of three-fourths of its stock, Walter Lenox, of Washington City, D. C., being owner of the remaining one-fourth. The said original bill also alledged the execution of certain deeds of trust by the said company to secure large amounts of indebtedness incurred in building its road from Alexandria to Washington.

The said original bill also further sets forth that, while your orator and the said Walter Lenox, sole owners of said railroad, were prevented by the exigencies and confusion of the late war from taking possession thereof, certain parties contrived, by an irregular and fraudulent proceeding, to make a pretended sale of the property and franchises of said company by virtue of one of said deeds of trust, and also to set

up a fraudulent pretended corporation called the Washington, Alexandria, and Georgetown Railroad Company.

The said original bill further sets forth and shows an agreement by the said Shoemaker, as agent for the Adams Express Company, with the aforesaid fraudulent and pretended company, to pay a debt of $60,000, due under one of the aforesaid deeds of trust to the city of Washington, and certain other contracts likewise made by said Shoemaker with O. A. Stevens and W. Jackson Phelps, as the agents of the said pretended company.

The said original bill then states, that after the rendition of a certain interlocutory decree by the circuit court of Alexandria County,
112 Virginia, virtually annulling the organization of the said pretended company, and restoring the road and franchises to the Alexandria and Washington Railroad Company, the true owners thereof, he, the said Shoemaker, procured from your orator a conveyance of all his right, title, and interest in and to the said railroad, its franchises and property, for securing the sum of $5,000 advanced, and also for the execution of a certain agreement made by and between the said Shoemaker, your orator, Walter Lenox, Geo. W. Brent, O. A. Stevens, W. J. Phelps, and I. Dean Smith; that by said agreement the said Shoemaker bound himself to pay all the debts of the said Alexandria and Washington Railroad Company, amounting to $195,000, as estimated; that he did pay one of said debts, and that he is abundantly able *fio* pay them all.

The said original bill then complains that your orator, as president of the Alexandria and Washington Railroad Company, under the final decree of the circuit court of Alexandria County, Va., notwithstanding the aforesaid conveyance of all his interest to said Shoemaker, had sued out of said court a writ of possession, ordering the restoration of the said road and property, &c.; that said Shoemaker had demanded payment of said sum of $5,000 advanced to your orator, offering to pay to him the amount of stock stipulated in the agreement, but that your orator had refused to pay the same upon the terms proposed.

Then, after charging your orator with all kinds of fraud and dishonesty, the said original bill prays an injunction restraining your orator from doing any act whatever as president of said Alexandria and Washington Railroad Company, and from taking any proceedings in law or equity in reference to said railroad except in that suit; and also that your orator's interest in the stock of said company may be sold for the payment of said sum of $5,000, and for other relief.

On the 16th of November, 1868, your orator filed his answer to the said original bill, admitting the facts stated as to the incorporation and legal organization of the Alexandria and Washington Railroad Company; also admitting the fraudulent and illegal proceedings of the parties claiming to own and hold said road, under the name of the Washington, Alexandria, and Georgetown Railroad Company; the rendition of the decree aforesaid by the circuit court of Alexandria County, and the issuance of the writ of possession at the instance of your orator.

In the said answer your orator also admits the execution of the conveyance aforesaid to secure the sum of $5,000 advanced, and of the agreement referred to in said conveyance, but your orator states in detail the circumstances of hardship and imposition under which said agreement and conveyance were executed. He also admits the demand of said sum of $5,000, but alleges a tender of the same to said Shoemaker on condition that he would reconvey the property to your orator, to be held as it was prior to said conveyance, but that the said

113 Shoemaker refused to receive the money on said terms. Your orator, in his said answer, also denies that said Shoemaker had performed or intended to perform his part of the agreement aforesaid, or that he ever paid any considerable part of the debts of said Alexandria and Washington Railroad Company, as he was bound to do; or that he was entitled to the injunction, or to any other relief prayed for in his said original bill.

Your orator further shows that, by order of this court, the injunction was granted as prayed for in said bill, and your orator is now held and bound thereby.

A replication to said answer has been filed, and the said original suit is now at issue, all of which will more fully and at large appear by reference to the proceedings in said cause remaining of record in this court.

And now, your orator says that, by his answer to said original bill, he is unable to make his defence as fully as the equity of his case requires, and having obtained leave to exhibit this, his cross-bill against the said Shoemaker, he now proceeds to state and charge as follows:

1st. The two instruments set out in said original bill, to wit: The conveyance executed by your orator to the said Shoemaker, being the Exhibit S. M. S., No. 1, in said bill, and the agreement made by and between the said Shoemaker, your orator, Walter Lennox, Geo. W. Brent, O. A. Stevens, W. I. Phelps, and J. D. Smith, a printed copy of which is hereto annexed, marked "Exhibit B," and prayed to be taken as a part of this cross-bill, are, by their terms and by the circumstances under which they were made, so connected as to constitute in law but one instrument, to be understood and construed together. The circumstances attending the execution of these instruments are truly set forth in the 10th, 11th, 12th, 13th, 14th paragraphs of the answer to said original bill, and your orator now states and charges that, for a long time, he refused to sign said agreement, because the advance of a much larger sum than $5,000 ought to have been provided for therein, according to a previous arrangement between the parties; but, driven by his necessities, and by the threats and persuasions of the said parties, he was finally induced to accept the sum of $5,000, and to execute said agreement. The conveyance was made by a separate instrument only because the agreement had been prepared long before, in the absence of your orator and this part of the transaction for your orator's benefit had been omitted in the draft of the instrument. Your orator insists that all the parties to the said agreement, together with Richard T. Merrick, of Washington City, ought to be made parties to the original suit, but your orator has no power by his cross-bill to bring them into court, and he is utterly prohibited by the injunction aforesaid from proceeding against them in any other tribunal.

2d. By the terms of said agreement, in the third clause thereof, the said S. M. Shoemaker agreed "to pay or settle, or compromise" all liabilities of the Alexandria and Washington Railroad Company.

114 Your orator now expressly states and charges, that he is himself a creditor of the said company to the amount of $50,000, most of which is in the form of judgments held by your orator at the time of executing said conveyance and agreement. Your orator states that these general facts were made known to said Shoemaker when he advanced the said sum of $5,000, and by said agreement, if it had been carried out, the said Shoemaker was bound to pay your orator fully ten times as much as he had advanced.

In the same third clause of said agreement it is stipulated that twenty

per cent. of the net earnings of the road should be divided among the parties thereto. Your orator's portion of said earnings amounts to much more than $5,000, and all the earnings of said road, or a great portion thereof, have all along been received by the said Shoemaker, for himself, or as the agent of the Adams Express Company; and so, your orator says that, if the said Shoemaker had fairly carried out said agreement, the aforesaid sum of $5,000 would have been long since paid, and that under any circumstances it has already been fully paid.

3d. But, your orator charges that the said Shoemaker has not fulfilled his part of said agreement in any respect whatever, and that he never attempted or intended so to do. The same is true with regard to all the other parties to said agreement, except Lenox, and perhaps G. W. Brent, as your orator will prove, if they shall be made parties to the said original suit, as they ought to be. Your orator charges that said Shoemaker, ever since the making of the aforesaid agreement, has been acting in the interest of the Washington, Alexandria, and Georgetown Railroad Company, and not in that of the Alexandria and Washington Company; that he has craftily and fraudulently sustained the former company against the latter, and that, while pretending to be ready to fulfill the agreement, he has been falsely and treacherously endeavoring to complicate the difficulties and prolong the litigation which prevents the said agreement from being carried out and performed.

The truth of these charges is apparent from the proceedings on the original bill in this case, by which your orator is enjoined from getting possession of the road for the benefit of the rightful company, as recognized in said agreement; and especially from the proceedings in a certain case now pending in this court, in which the Adams Express Company is complainant, and Joseph Davison, W. H. Marbury, and others, are defendants. The bill in the latter case is sworn to by said Shoemaker, and its object is to set up the contract made by said express company, in 1866, with the fraudulent company aforesaid, and to prevent the decree of the circuit court of Alexandria County, Va., in favor of the rightful company from being carried into effect. A copy of the writ of possession, issued under said decree, is herewith filed, marked "Exhibit N," and also a copy of a summons issued from this court in the said case of the Adams Express Company vs. W. Marburry and others, marked "Exhibit O," both prayed to be taken as parts of this cross-bill.

115 The said last-mentioned suit is carried on by the said Shoemaker, and at his instigation the said road was placed in the hands of O. A. Stevens and W. J. Phelps, his receivers. These parties were, at the time of making the agreement, the lessees of the fraudulent company, and although themselves parties to the agreement, and bound by its stipulations to maintain the interests of the rightful company, they have, by the connivance of the said Shoemaker, been kept in possession of the road in the interests of the spurious company. The agreement was executed on the 6th December, 1867, and on the 6th day of February, 1868, these agents and confederates of the said Shoemaker voluntarily became parties defendants in the case then pending in the circuit court of Alexandria County, Va., between the rightful company and the spurious company, and took part against the rightful company in violation and fraud of said agreement. Your orator herewith files a copy of their said answer, marked "Exhibit G," and prayed to be taken as a part of this cross-bill. Your orator further states that the said Shoemaker, Stevens, and Phelps, combining and confederating with others against the rightful company aforesaid, applied to the last Congress for a new charter

granting them the right to construct a railroad on the exact line of the old one, which application was in fraud of their agreement, and calculated to destroy the property and franchises of the Alexandria and Washington Railroad Company, which they were bound by the said agreement to protect.

4th. Notwithstanding the oppression and injustice which compelled your orator to execute the said agreement, he was willing and anxious, and for a long time continued to demand that the same should be carried out according to its spirit and intent. His necesities had compelled him to make the sacrifice of surrendering his stock on the hard terms of the agreement; he would have been satisfied if the parties to that agreement had fairly and honestly performed it. But they have utterly failed and refused to do so, although your orator has repeatedly urged them, and especially the said Shoemaker, to commence the performance of the contract. The payment of the debts of the Alexandria and Washington Railroad Company would have relieved your orator from all his difficulties; but the said Shoemaker, so far from having paid those debts, as he was bound to do by a double obligation assumed both to the old and new company, has encouraged and prolonged the litigation on the subject, thus increasing the obligations of the legal company and multiplying the difficulties in the way of any satisfactory arrangement. Thus, your orator charges that, in the case of The Alexandria and Washington Railroad Company vs. Fowle, Snowden & Co., pending in the circuit court of Alexandria County, Va., in which the court maintained the priority and validity of the deed of trust and debt of $60,000 due to the city of Washington, the said Shoemaker interfered and procured an appeal to be taken. Another suit is pending in the supreme court of the District of Columbia between the Washington, Alexandria, and Georgetown Railroad Company on the
116 one side, and the trustees in the aforesaid deed of trust and other persons on the other side, in which also the validity of said deed of trust and debt have been established by final decree; but the said Shoemaker, although well knowing the existence of this litigation, instead of arranging and paying the debt as he was bound to do, has permitted an appeal to be taken to the Supreme Court of the United States, thus increasing the burthens of the company which it was his duty to remove. And so your orator charges that said Shoemaker has fraudulently evaded the performance of his said agreement.

5th. Your orator further states that the amount of stock stipulated in said agreement to be assigned to J. Dean Smith and George W. Brent, was to be assigned in consideration of their professional services to be given in aid of the purposes of said agreement, especially in the litigation then pending to establish the rights of the Alexandria and Washington Railroad Company. There was a like amount of 200 shares included in the 850 shares allotted to Stevens & Phelps, intended for R. T. Merrick, of Washington City, to be assigned upon the like consideration of professional services. But your orator charges that neither the said Smith, nor Brent, nor Merrick has ever done anything in furtherance of said agreement; on the contrary, all the gentlemen, as attorneys, have been retained by said Shoemaker and paid to aid him in carrying on the litigation above mentioned, and especially as treasurer of the Washington, Alexandria, and Georgetown Railroad Company, or as agent of the Adams Express Company, or through his agents and confederates, Stevens & Phelps, to hold the said road and receive the earnings thereof. Your orator insists that the action of the said Shoemaker, and of all the other parties to the said agreement in

the capacity of direcrors, treasurer, lessees, agents, and attorneys of the fraudulent and illegal company aforesaid (the W., A., & G. R. R. Co.) is wholly inconsistent with the obligations of said agreement, and in fraud of the just rights of your orator under it.

6th. Your orator further shows that the lease mentioned in the said agreement as having been made to Stevens & Phelps by the Washington, Alexandria, and Georgetown Railroad Company, and which was to have been assigned by them for the benefit of all parties to said agreement, has been pronounced by the courts to be utterly void and of no effect, and that without reference to the legality or illegality of the organization of the said company, which the said Shoemaker admits to be fraudulent and illegal. This stipulated assignment of the said lease as the means of readily getting possession of the road, was the sole consideration for the allotment of 650 shares of stock to said Stevens and Phelps, under the proposed new organization. And so your orator charges that a material and important part of the consideration on which said agreement was founded, has utterly failed; for although this failure of consideration applies only to said Stevens and
117 Phelps, yet it manifestly affects the whole agreement, so that it would be inequitable and unjust to enforce any part of its provisions.

7th. Your orator further charges that, notwithstanding the failure of the consideration for said agreement, and the failure and refusal of all the parties to carry out its provisions, the said parties have had the unblushing boldness and injustice to usurp the organization of the Alexandria and Washington Railroad Company, holding a pretended election, and making the said Shoemaker president, and the said Smith, Stevens, Brent, and Merrick, directors. This was assumed to be done under the conveyance and agreement aforesaid, although there was then in existence a regular organization of the company of which your orator was president, as he had been from the beginning. It is upon the ground of this fraudulent usurpation that the said Shoemaker claims to prevent your orator from acting in any way as the president of the said company. But your orator insists that, under all the circumstances of this case, the parties aforesaid are not the holders of the stock of said company, and have no right in equity to hold the pretended election and make the organization aforesaid.

8th. Your orator further charges that said Shoemaker has for several years past been receiving a large part of the earnings of said road, either as the agent of the Adams Express Company, or in some other capacity, or under some other pretext. And your orator insists that, as the true owner of three-fourths of the stock of the railroad company, he is entitled to have an account of all the said earnings so received by said Shoemaker, and to recover three-fourths of the same. Insisting that both the said conveyance and the said agreement shall be rescinded and annulled, your orator admits his liability to repay the sum of $5,000 advanced to him as stated in said conveyance, with the legal interest thereon, up to the time of the tender made as hereinafter stated. And your orator hereby offers to allow the said sum, with the interest due thereon, as an offset to your orator's proportion of the earnings of said road received by said Shoemaker aforesaid.

On the day of , 1868, your orator tendered to the said Shoemaker, the said sum of $5,000, with the interest due thereon, and demanded a reconveyance of his property in said road; but the said Shoemaker refused to accept the money so tendered and to reconvey as

demanded, claiming to hold said property still subject to the provisions of the said agreement.

All of which actings are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator in the premises. Wherefore your orator prays that the said Shoemaker may be required, on his corporal oath, to answer the several allegations of this cross-bill, especially that he answer the following interrogations:

1st. Whether the said sum of $5,000 was not advanced to induce your orator to sign the agreement in the original bill mentioned; and whether, in the previous negotiations, he, the said Shoemaker, 118 had not agreed to advance a much larger sum, to wit; the sum of $, in connection with the said agreement, and as part of the same transaction?

2d. Whether the said Shoemaker was not fully informed at the time he advanced the said sum of $5,000, that your orator held a large amount of judgments and other debts against the Alexandria and Washington Railroad Company, and whether it was not well understood that the said sum of $5,000 was more than covered by said debts which said Shoemaker bound himself to pay?

3d. Whether he, the said Shoemaker, did not apply to the last Congress, in conjunction with others, for a charter which was calculated wholly to supercede and overthrow the Alexandria and Washington Railroad Company, and that he state the nature and object of such application?

4th. Whether the said Shoemaker has paid, settled, or compromised any of the debts of the Alexandria and Washington Railroad Company according to the terms of his agreement; and if so, what debts he has paid, and whether he did not take in his own name a conveyance of property for the only sum so paid by him. Also, whether he did not procure an appeal to be taken in the case of the Washington and Alexandria Railroad Company vs. Fowle, Snowden & Co., as stated in this cross-bill, against the interest of the said company, and for the purpose of increasing and prolonging litigation on the subject of the debt of $60,000 due the city of Washington?

5th. Whether the stipulations in said agreement for assigning the several amounts of stock to J. Dean Smith and George W. Brent, together with 200 shares of that assigned to Stevens and Phelps, intended for R. T. Merrick, were not made upon the express consideration that said Smith, Brent, and Merrick, were to give their professional services in aid of said agreement, and especially to maintain the rights and franchises of the said Alexandria and Washington Railroad Company. And whether he, the said Shoemaker, has not, since the execution of said agreement, retained and paid the said lawyers, or some of them, for advocating and sustaining the possession of said road by the fraudulent rival company aforesaid, and under contracts made with it?

6th. Whether the assignment of the lease as stipulated in the said agreement was not the only consideration for 650 shares of stock to the said Stevens and Phelps, and whether the said lease has not been annulled and made void by the courts, as hereinbefore stated?

7th. Whether the said Shoemaker has not been in receipt of a large part of the earnings of the said road ever since the execution of said agreement, or for some part of the time; and in what capacity he received the same, and to what amount?

Your orator further prays that this cross-bill may be heard at the same time with the said original bill; that an account may be taken of the earnings of said road at any time received by the said Shoemaker;

and that upon payment of said sum of $5,000 and interest, the
119 said Shoemaker may be required to reconvey to your orator the property in said road, being three-fourths of the whole, and that the whole agreement may be cancelled and annulled so far as the said Shoemaker is concerned, and with regard to all the other parties thereto, if they shall be made defendants to the original bill; and that the said Shoemaker may be enjoined and prohibited from acting as president of the company under the fraudulent election and organization aforesaid, and that the other parties to said agreement, if made parties to the original bill, may be prohibited and enjoined from acting as directors by virtue of said pretended election; and that your orator may have such other and further relief as the exingencies of the case may require.

May it please your honors to grant the writs of subpœna and injunction, commanding, &c.

FRED. P. STANTON,
Solicitor for Complainant in the Cross-bill.

120 *22.—Agreement.*

This agreement made and executed this 6th day of December, 1867, A. D. witnesseth: That the parties hereto in consideration of the respective covenants and agreement herein specified agree as follows:

1st. James S. French and Walter Lenox covenant and agree to convey all right, title, and interest they may have in and to the Alexandria and Washington Railroad to a corporation, to be formed as hereinafter specified, or to devote all the said interest to the common benefit of the parties hereto in such proportions as are hereinafter specified, should the said Alexandria and Washington Railroad Company be revived, and the corporation by that name again come into existence.

2d. When the parties hereto shall have agreed to reorganize, and shall actually reorganize the said Alexandria and Washington Railroad Company, or shall organize another corporation on the basis of the said title of the said French and Lenox to the said Alexandria and Washington Railroad, the undersigned, Oscar A. Stevens and W. Jackson Phelps, hereby agree to assign all interest they have to such corporation, such interest being as lessees of the Washington, Alexandria, and Georgetown Railroad Company, or to hold the same for the exclusive benefit of the parties hereto, according to their respective interests in said corporation hereinafter specified.

3d. The undersigned, Samuel M. Shoemaker, on behalf of himself and the Adams Express Company, hereby covenants and agrees to aid the organization to be formed, or reorganized as aforesaid, by money and credit; that is, to pay or settle or compromise all liabilities of the
121 Washington and Alexandria Railroad Company, the liabilities of the lessees of Washington, Alexandria, and Georgetown Railroad Company for procuring stock and materials for working said road, and all other bona fide liabilities incurred by them on behalf of said road; and the said Shoemaker shall be substituted to all the rights and remedies of any creditors so paid off, discharged, or compromised with as aforesaid, any compromise, nevertheless, to be for the benefit of the parties hereto, or the organization by them established or organized. Said liens to which the said Shoemaker may then become entitled, are, nevertheless, not to be enforced or foreclosed until a reasonable time after all litigation in reference to the title of said road and the regularity and legality of the corporation to be formed and reorganized by the parties hereto shall have ended and been terminated in the court of last resort

to which the same may be carried. And it is further agreed that instead of the security above agreed to be furnished to the said Shoemaker in substituting him to the right of any creditors whose claims he may pay or compromise, any other security may be given instead thereof, upon which a majority of the interest in said corporation to be formed or reorganized under this agreement may determine. The nett receipts of the said company to be formed or reorganized under this agreement shall be devoted to pay the interest and principal of the same so to be advanced by said Shoemaker as aforesaid, except twenty per cent. of said receipts, which shall be divided among the parties hereto as stockholders according to their respective interests.

4th. This agreement is to be carried into effect on the rendition of the decree of the circuit court of Alexandria County in the case of the
122 Washington and Alexandria Railroad Company against the Washington, Alexandria, and Georgetown Railroad Company, and the said company shall be then formed or organized with a capital stock of three thousand shares, (3,000 shares,) to be divided and distributed as follows:

To the said	French & Lenox	1,250 shares.
" " "	Stevens & Phelps	850 shares.
" " "	S. M. Shoemaker	500 shares.
" " "	J. Dean Smith	200 shares.
" " "	Geo. W. Brent	200 shares.
		3,000 shares.

5th. It is further agreed that said lessees shall be continued under said corporation as general manager and superintendant at the sum of two hundred and fifty dollars per month each, until otherwise ordered by the board of directors, as to salary.

In witness whereof the said parties have hereto set their hands and affixed their seals this 6th day of December, A. D. 1867.

WALTER LENOX.	[SEAL.]
OSCAR A. STEVENS.	[SEAL.]
J. DEAN SMITH.	[SEAL.]
GEORGE W. BRENT.	[SEAL.]
SAM'L M. SHOEMAKER.	[SEAL.]

(Indorsed:) Exhibit B. Copy of agreement of Shoemaker, J. D. Smith, and others, made with French & Lenox. Filed May 31, 1869. W. H. Barry, clerk.

123 *23d.—Agreement.*

This assignment, made this sixth day of December, A. D. 1867, by and between James S. French, of the town of Alexandria, Virginia, of the one part, and Samuel M. Shoemaker, of the city of Baltimore, Maryland, of the other part, witnesseth: That, in consideration of the payment of five thousand dollars by said Shoemaker to me, the said James S. French, the receipt whereof is hereby acknowledged, I do hereby assign, convey, transfer, and set over unto the said S. M. Shoemaker, or his assigns, all my right, title, interest, claim, and demand whatsoever in and to the property, stock, road, road-bed, franchise, and charter of the corporation, known as the Alexandria & Washington Railroad Company, formed under and by authority of an act of assembly of Virginia, passed Febru-

ary, 27th, 1854, or any interest which I may possess in and to the same or thereunder; and I do further agree to make such other and further conveyance or assurance as may be hereafter required by said Shoemaker or his assigns. The foregoing assignment being for the following purposes, viz:

1st. To secure the payment of five thousand dollars due said Shoemaker as an advance on the same; and

2d. For the purposes and objects set forth in an agreement bearing even date herewith between said French, Lenox, Shoemaker, Oscar A. Stevens, J. Dean Smith, George W. Brent, and W. Jackson Phelps.

(Signed) JAMES S. FRENCH.

Witness:
J. S. CALLAN as to FRENCH.

DISTRICT OF COLUMBIA, &c., &c.

Duly acknowledged before notary.

[NOTARIAL SEAL.]

124 (Endorsement on the back of the agreement:)

We, the undersigned, do hereby agree & consent to the terms & conditions of the within assignment.

(Signed)

O. A. STEVENS. [SEAL.]
W. J. PHELPS. [SEAL.]
J. DEAN SMITH. [SEAL.]
GEO. W. BRENT. [SEAL.]
WALTER LENOX. [SEAL.]

(Indorsed:) S. M. Shoemaker v. J. S. French. Assignment to Shoemaker. Exhibit C.

125 *24.—Answers of Stevens & Phelps.*

Answer of Stevens & Phelps.

The joint and several answer of Oscar A. Stevens and W. Jackson Phelps to the bill of complaint exhibited in the circuit court for Alexandria County, wherein the Alexandria & Washington Railroad Company is complainant, and the Washington, Alexandria, & Georgetown Railroad Company and others, are defendants.

These defendants answer and say that there are matters and things contained in the said bill of which they are ignorant, and, if deemed material, they call for proof.

They say that, on the 16th day of July, 1857, the complainant executed to Walter Lenox a deed of trust on its franchises, road-bed, &c., to secure $30,000 of coupon bonds given to Benjamin Thornton; that Lenox, the said trustee, becoming incapacitated to execute the trust, Joseph B. Stewart was appointed substituted trustee, who, on the 10th day of April, 1862, exposed the said road at public auction, when Alexander Hay became the purchaser, and shortly thereafter, by deed, conveyed the road to said Hay and one Joseph Thornton, as the Washington, Alexandria, and Georgetown Railroad Company.

These respondents say that this new company was duly organized under and by virtue of the 28th and 29th sections, chapter 61, code of Virginia; they are further advised that said company have subsequently been recognized to be a legal organization, and the legality of the sale

recognized by an act of the general assembly of Virginia. That
126 afterwards, to wit, on the 5th day of May, 1866, the said Washington, Alexandria, & Georgetown Railroad Company executed to these respondents a lease of their said road for the term of ten years, a true copy whereof is here filed as Exhibit No. 1, O. A. S.

These respondents are advised that, after the lapse of time, to wit, from the 10th of April, 1862, up to the institution of this suit, in 1866, the complainants are bound by their laches and accquiescence.

The Washington, Alexandria, & Georgetown Railroad Company was recognized by the public as a valid and legal organization; on the faith of this, they leased the said road; and they have largely improved the same by the building of depots and engine-houses, and by obtaining of its turn-table, and entering into liabilities for rolling-stock, motive power, &c. All these facts, the defendants are advised, entitle them to have complainant's bill dismissed, with costs; and they pray that the same may be done accordingly.

O. A. STEVENS.
W. J. PHELPS.

R. T. MERRICK,
Sol'r and of Counsel.

DISTRICT OF COLUMBIA,
County of Washington, ss:

They, Oscar A. Stevens and W. Jackson Phelps, appeared before me, a notary public for the district and county aforesaid, and made
127 oath that the matters and things contained in the foregoing answers are true to the best of their knowledge and belief.

Given under my hand this 4th day of February, A. D. 1868.

[SEAL.] JOHN F. CALLAN,
Notary Public.

(Indorsed:) Copy. Answer of Stevens & Phelps. A. & W. R.
128 R. Co. vs. W. A. & G. R. R. Co. Exhibit G. Filed May 31, 1869. W. H. Barry, clerk.

129 25.—*Exhibit K.*

EXHIBIT K.

OSCAR A. STEVENS, &c., *vs.* JOS. DAVISON. } Copy decree.

VIRGINIA:

At a supreme court of appeals, held at the capitol, in the city of Richmond, on Thursday, July 2nd, 1868, Oscar A. Stevens and W. J. Phelps, appellants, against Joseph Davison, appellee:

Upon an appeal from a decree pronounced by the district court held for the fourth judicial district, at the town of Fredericksburg, on the 8th day of January, 1868, affirming, with costs, &c., a decree pronounced by the circuit court of Alexandria County on the 31st day of December, 1866, in a suit in which the appellee was plaintiff, and the appellants were defendants.

This day came the parties by their counsel, and the court, having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel, without deciding whether or not it would

have been competent to the stockholders of the Washington, Alexandria, and Georgetown R. R. Co. to make such a lease of their railroad as that in the proceedings mentioned—which is a question that does
130 not arise in this case—is of opinion that it was not competent for the board of directors of the said company, without the sanction of a lawful meeting of the stockholders, to make the lease in the proceedings mentioned.

1st. Because a board of directors of a railroad company have no authority to make such a lease under the powers vested in such a board by law; and,

2nd. Because the said lease was in contravention of the 6th article of the by-laws of said company, which provides that no contract shall be made "involving the franchise of said road, except the same be approved by a general meeting, representing a majority of the stock, after being recommended by a majority of the stockholders," the court being of opinion that, while the said lease does not involve the essential franchise of the said company to be a corporation, it does involve the franchise to take tolls upon the road of said company, which comes within the meaning of "the franchise of said road," as expressed in the said by-laws. And the court is further of opinion that, although by the 18th article of the by-laws of said company authority is given to the board of directors to alter or amend any of the said by-laws, the said road had no authority, under the said by-law, or otherwise, to disregard or to alter the said provision of the 6th by-law, which was intended to impose a limitation upon the powers of the board of directors.

131 The court is further of opinion that the said lease, having been made by the board of directors, two of whom had been concerned in the fraudulent issue of a very large amount of spurious stock, greatly exceeding in amount the lawful stock of the company—having been made on the very day on which the regular term of office of said directors was to expire, and on which the annual meeting of the stockholders of said company should regularly have been held, and when the said board of directors had failed to issue the call which it was their duty to issue for the said meeting—being made to two persons in the employment of said company, one of whom had been an agent, to some extent, in the issue of a large amount of such spurious stock, and securing to the said lessees a clear profit, except the amount payable for taxes, to the extent of one-half of the gross earnings of said company during the term of said lease, besides the sum of seven thousand dollars per annum to be paid by the "Adams Express Company" under a previous contract with the same railroad company, and charging all the debts and expenses of the said company, except the taxes upon the share of the gross earnings reserved to the said company, the same must be regarded as a fraud upon the rights of the stockholders, and that this conclusion is
132 not repelled by the statement that the said lease was made after consultation with a majority of the stockholders, and with their approval, because—

1st. It does not appear whether the stockholders thus consulted were the holders of genuine stock or of spurious stock; and,

2nd. The approval of stockholders thus informally obtained could have no legal force or effect.

The court is, therefore, of opinion that the said lease is null and void, and should be so declared upon the final hearing of the cause.

The court is further of opinion that, while, for the reasons assigned in the case of "Gardner vs. The London, Chatham, and Dover Railway

Company," 2nd Law Report, (Chancery Appeals, 200,) a court of chancery will be reluctant to appoint a receiver to take charge and manage a railroad, it is competent to do so when such a course is indispensable to secure the rights of the legitimate stockholders and to prevent a failure of justice.

And the court is of opinion that, under the circumstances of this case, it was proper for the court to appoint a receiver to take charge of and manage the said railroad until it can be ascertained, by a proper inquiry to be made in this cause, who are the legitimate stockholders of said company, to whom the custody and management of said rail-
133 road should be committed. And the court is of opinion that it is not made to appear that the circuit court erred in not appointing the lessees as the receivers to manage the said road during the pendency of this cause; but the court is of opinion that it was not proper to enjoin Robert W. Latham, Jos. B. Stewart, Samuel M. Shoemaker, Oscar A. Stevens, and J. Dean Smith from acting as directors and officers of said railroad company, or doing any act as such, such an order not being necessary to accomplish the object of the principal order. The court is, therefore, of opinion that the said order of the circuit court be amended by striking therefrom the order of injunction last mentioned; and that the said order, as amended, be affirmed; and that the appellants do pay, under the appellee, thirty dollars damages and also his costs by him about his defense in this behalf expended.

Which is ordered to be certified to the said district court, the clerk of which is ordered forthwith to certify the same to the clerk of the said circuit court.

Appellee's costs in the court of appeals, $25 30.

A copy. Tests:
(Signed) M. T. STARK, *C. C.*

134 (Indorsed:) Copy of the decree of the court of appeals of the State of Va., rendered July 2nd, 1868, in the case of O. A. Stevens & others vs. Jos. Davison.

This is admitted to be a correct copy.

GEORGE W. BRENT,
Counsel for Compl't.

Filed Dec. 15, 1869. W. H. Barry, clerk.

135 26.—*Writ of possession.*

The Commonwealth of Virginia to the sheriff of Alexandria County, Va.:

We command you that you cause the Alexandria and Washington Railroad Company, its duly constituted officers and agents, to have their possession of a certain railroad in the county of Alexandria, in the State of Virginia, now and heretofore occupied by the Washington, Alexandria, and Georgetown Railroad Company, its officers, agents, lessees, or servants, which the Alexandria and Washington Railroad Company, its duly constituted officers and agents, lately, in our circuit court of Alexandria County, by a decree pronounced by the said circuit court on the twenty-eighth day of August, 1868, in a suit in chancery therein depending, wherein the Alexandria and Washington Railroad Company and others are plaintiffs, and the Washington, Alexandria, and Georgetown Railroad Company and others are defendants, have recovered

against the said Washington, Alexandria, and Georgetown Railroad Company, its officers, agents, lessees, and servants, whereof they are convict, as appears to us of record, and how you shall have executed this writ, make known to the judge of our said circuit court, at the court-house of said county, on the first Monday in November next; and have then and there this writ.

JEFFERSON TRACY,
Clerk of our said Court,

At the court-house aforesaid, this 30th day of September, 1868, and the 93d year of the Commonwealth.

136 (Indorsed:) Copy of execution for restoring possession of A. & W. R. R. Exhibit N. Filed May 31, 1869. W. H. Barry. clerk.

137 *27.—S'p'a X-bill:*

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Virginia, ss:

The President of the United States of America to Sam'l M. Shoemaker, a citizen of the State of Maryland, greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America for the district of Virginia, at the court-room, in the custom-house, in the city of Richmond, in said district, on the first Monday in the month of July next, to answer the cross-bill of complaint of Ja's S. French, a citizen of the State of Virginia, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Virginia to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 11th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the 93d.

[L. S.] W. H. BARRY, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that, unless he enter his appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

W. H. BARRY, *Clerk.*

138 U. S. MARSHAL'S OFFICE,
Richmond, Va., June 11, 1869.

I hereby depute ——— ——— as special deputy to execute this writ, and make return in due form.

D. B. PARKER,
U. S. Marshal.

Service of this subpœna is this day acknowledged, June 15, '69.

BRENT & WATTLES,
Sol'r for Shoemaker.

(Indorsed:) No. . Circuit court of the United States, district of Virginia. James S. French vs. Samuel M. Shoemaker. Chancery subpœna, returnable July rules, A. D. 1869. W. H. Barry, clerk. Filed June 17, A. D. 1869. W. H. Barry, clerk. F. P. Stanton, comp't sol.

139 28.—*Orders.*

And at another day, to wit, at rules, held in the clerk's office of said court on the first Monday in July, 1869—

It was ordered that this cause be continued till the next rules.

At which day, to wit, August rules, 1869—

The defendant, being duly summoned, and not appearing, it is ordered that, unless he appears and defends this cause by the October rules next, a decree will be entered against him herein.

At which day, to wit, October rules, 1869—

Came the defendant by his counsel, and filed his answer to the plaintiff's bill, and the plaintiff his replication thereto.

Which said answer and replications are in the words and figures following, to wit:

140 29.—*Answer of def't Shoemaker to cross-bill.*

In equity in the circuit court of the United States for the district of Virginia.

S. M. SHOEMAKER
vs.
JAMES S. FRENCH.

Answer of Shoemaker, pl'tiff in original bill, to cross-bill, French, defendant, filed in this cause.

To the honorable the judges of the circuit court of the United States for the district of Virginia, sitting in equity:

The answer of S. M. Shoemaker to the cross-bill herein exhibited respectfully shows that the original bill in this cause states fully and truly the circumstances under which the agreement and assignment set up therein were made, and the consideration therefor; and respondent reiterates the matters and things set forth therein.

Respondent denies paragraphs 10, 11, 12, 13, & 14 of defendant French's answer as true, and he especially denies that any larger or other money consideration than the five thousand dollars ($5,000) named in said conveyance of French to him was promised or agreed to be paid at any time, and he also emphatically denies that any threats or promises or undue influence of any kind was used to induce said conveyance; but, on the contrary, avers that it was made by said French freely and voluntarily, and was, in fact, made and proffered to his attorney
141 without any intercourse or communication whatever with said French by respondent or his attorney; and he avers that the statements in the first clause of said cross-bill are wholly false and without foundation.

2d. Respondent denies that said French is the creditor of said com-

pany for fifty thousand (50,000) dollars, or any sum, or that any facts, either general or special, showing any such indebtedness, were known to the respondent when he paid said five thousand (5,000) dollars, or at any time, or that respondent was bound to pay said French ten times said sum, or, in fact, any sum save what he did pay when said fair and well-considered contract and conveyance made by said French and others; and he avers, to the contrary, that French is not a creditor, but largely a debtor to said company; and he especially denies that either respondent himself, or as agent of the Adams Express Company, has ever received a cent which by any possibility could belong to said French, or be in any way applicable to said indebtedness of said French to him under said conveyance; and he avers that the statements in clause 2 of said cross-bill are wholly false and unfounded.

3d. Respondent denies that he has, in any way, or to any ex-
142 tent, failed in the exact fulfilment of his part of said contract, but avers that he has been at all times, and is now, able and anxious to perform it in its letter and spirit; and he especially denies that he has been acting in the interest of the Washington, Alexandria, & Georgetown Railroad Company, or that he has craftily and fraudulently, or in any way, sustained said company against the Alexandria and Washington Railroad Company; and he denies the charges in the 3d clause of said bill are proven by the cases referred to therein, and he avers that the statements and clauses in said 3d clause are false and unfounded and absurd. Respondent admits that he did apply to Congress for a charter for a road and bridge in the District of Columbia, but he denies that, if said application had been granted, that it would have been detrimental to the interests of the parties to said agreement, or that it was intended so to be. On the contrary, he avers that said application was made to carry out said agreement, and for the benefit of the parties thereto; but as it failed, respondent is at a loss to understand how it can be a subject of complaint to said French.

4th. Respondent does not know whether French was willing and anxious at any time, and for how long time, to have said agreement carried out; but respondent denies that he ever, at any time, demanded,
143 or showed any willingness to have it fairly carried out in its spirit or interest, and respondent avers and charges that, as soon as said French received said sum of money, he fraudulently and dishonestly refused to act under said agreement, and obstructed its performance in every way in his power; and respondent avers that he has fully performed said agreement on his part, and, so far as he knows, all the parties thereto, save French, have also performed their parts respectively. Respondent has, to the best of his ability, acted in all his dealings under said agreement for the interest of the parties thereto, and the charges to the contrary in clause 4th of said bill are wholly false and unfounded save in the imagination and vagaries of the brain of said French. And respondent denies the truth of said charges, and especially the impression sought to be drawn from said charges, and he denies that he has evaded, or sought in any way whatever to evade, the performance of said agreement.

5th. Respondent wholly denies the statements & charges set forth in clause 5 of said cross-bill. They are false and unfounded, and he especially denies that respondent ever acted as treasurer or agent of said company, (viz, W., A., & G. R. R.,) or that he acted as director
144 therein within about a year before the date of said agreement; and he also denies that any or either of the parties to said agreement acted in any or either of said characters, or in any way acted in-

consistently with the terms of said agreement. And respondent is at a loss to discover what ground of complaint it would afford to said French if the charges in clause 5 were as true as they are false.

6th. Respondent denies that there was any failure of consideration for said agreement on the part of Stevens and Phelps as charged in clause 6, or otherwise; he submits that the statements and charges in said clause are totally insufficient to ground any objection upon, even if true, which respondent denies, and avers that they are false and unfounded.

7th. Respondent admits after due and sufficient notice to said French, he and the parties to said agreement did regularly and legally reorganize the Alexandria & Washington Railroad Company, and your respondent was duly and legally elected president of said company, and claims to act as such at all proper times and on all proper occasions, and your respondent denies that, prior to such organization and election, there was any proper representation of said company, and especially
145 denies that said French was authorized to act as its president. The facts as to this are truly set forth in the original bill. Respondent avers that, he and the parties to said agreement are the only true and bona fide holders and owners of the stock of said company, and your respondent holding the proportion of stock assigned to said French under said conveyance to him as a ple'ge for the payment of said sum of five thousand (5,000) dollars.

8th. Respondent admits that as trustee of the Adams Express Company he has received and disbursed money from the earnings of the said road running from Alexandria to Washington, and he is ready to account therefor to the parties who have the right to call upon him to do so for such earnings. Respondent emphatically denies the said French has, or by any sort of possibility can have any interest or right in or to said earnings, or to any account thereof, or that one cent thereof is in any way applicable or could be made so to extinguish the indebtedness of said French to him under said conveyance, even if said French was the owner of the stock as stated and charged in clause 8 of said cross-bill. The respondent denies that he is the absolute owner of any
146 of the stock of said company or has any interest therein save an equitable interest in his proportion thereof under said agreement, by way of equity of redemption.

Respondent denies that French made any tender of said sum of five thousand (5,000) dollars or any part thereof, or that respondent refused to accept said sum and to reconvey to him his interest in the stock of said company. This charge, like the others in clause 8, is wholly false and unfounded.

And in reply to the several interrogatories he specially addressed to him in said cross-bill, says as follows:

1st. To the first interrogatory he says, No. French freely and voluntarily made an offer to convey his interest, as he did, and sign the agreement, as he did; in fact, the respondent cared little about the matter, and was not disposed to hold out any inducement, or to have anything to do with him. Respondent never agreed to advance or thought of advancing to him any other sum than the one mentioned by French in his conveyance.

2d. To the second interrogatory he says, No. On the contrary, respondent was informed & believed, and in fact knew that French was not only not a creditor, but was a large debtor to said company,
147 and that the judgements referred to were in fact extinguished, or at any rate that French had no interest in them individually.

3d. To the third interrogatory he says he did apply to Congress for a charter, but so far from his intention being to supercede the interest of the parties to the agreement, the application was made as the best mode of solving a difficulty which stood and still stands in the way of the immediate enjoyment of their interests. The bill proposed to charter a company with power to condemn the present railroad track and bridge within the district of Columbia by a jury valuation, & if it had succeeded would have put the property in the possession of the parties to the agreement.

4th. I did pay a judgement obtained against the railroad company in Alexandria upon which execution was about to issue, and this was the only debt since the making of the agreement which has been fairly ascertained and in condition to be paid. I did not pay an appeal on the Fowle, Snowden & Co. debt against the interest of the company, and for the purpose of increasing and prolonging litigation; on the contrary that appeal was taken by Fowle, Snowden & Co., by suggestion of Geo.
W. Brent, who, as the original bill shows, was the party to judge
148 of its propriety. It was intended to, and did serve the interest of the company.

5th. To the fifth interrogatory he says: I have not paid Smith, Brent, or Merrick, or either of them, for advocating or sustaining the fraudulent company in possession of the railroad. I have done all in my power to crush it, as said attorneys have.

6th. To the sixth he says: The agrement shows the consideration upon which it was made; the lease has been pronounced bad by some of the courts, but the cases are not yet finally disposed of. It has not been annulled or vacated.

7th. To the seventh he says: That I have received and disbursed a part of the earnings of the railroad as agent and trustee of the Adams Express Company, and I have accounted and am ready to account in this court to the proper person, for such receipts and disbursements. French has no concern with those earnings, either as to the receipt of them or the amount.

And having fully answered said cross-bill, respondent prays that it may be dismissed, and a decree be passed in said cause, in which filed as is prayed by his original bill, and he will ever pray, &c.

SAM'L M. SHOEMAKER.

Subscribed and sworn to before me this 15th day of September, 1869. In testimony whereof witness my hand and seal the day and date last above mentioned.

ISAAC BUROPER, JR.,
United States Commissioner for the District of Maryland.

(Indorsed:) Answer of S. M. Shoemaker to French's cross-bill.

149 30.—*Rep'n.*

SHOEMAKER *ads.* JAMES S. FRENCH. } Cross-bill.

And now came complainant, James S. French, in cross-bill, and files his replication thereto, and denies each and every allegation contained in said answer.

GILMER,
For Compl't French.

150 (Indorsed:) Shoemaker ads. James S. French. Replication to answer. French to cross-bill. Filed Oct. 1, 1869. W. H. Barry, clerk.

151 31.—*Notice.*

U. S. CIR. C'T DIST. VA.,
Richmond, Va., 24th November, 1869.

Messrs. J. DEAN SMITH, Esq., and GEORGE W. BRENT, Esq.:

SIRS: You are hereby duly notified that on the 3rd day of December next, we shall press for a full and final hearing of the cases of S. M. Shoemaker vs. James S. French, and James S. French, on a cross-bill vs. Samuel M. Shoemaker, pending in the circuit court of the United States, at Richmond, which said cases were, in open court this morning, you agreeing, set for a hearing on the 3rd day of December next.

Should, from any unforseen cause, the said cases not be ready, then and in that case, we shall press the motion for a dissolution of the injunction in the said case awarded, without, reference to the individual interests of the said French, in the subject-matter of the controversy.

Respectfully.

JOHN H. GILMER & F. P. STANTON,
Counsel for Ja's S. French.

152 Nov. 24, '69.

Copy of the within notice this day accepted.

GEOR'E W'M BRENT,
J. DEAN SMITH,
Sol'r for Shoemaker.

(Indorsed:) French vs. Shoemaker. Notice to dissolve the injunction. Filed Nov. 25, 1869. W. H. Barry, clerk.

153 32.—*Motion to dissolve.*

And at another day, to wit, Friday morning, November 19th, 1869, came again the parties, by their attorneys, and thereupon the defendant moved the court to dissolve the injunction heretofore awarded in this cause.

Upon consideration thereof it is ordered by the court that the said motion be denied, with liberty to the parties to renew the application at the final hearing of this cause, should the parties so desire.

154 34.—*Orders.*

And at another day, to wit, at a circuit court of the United States for the district of Virginia, held on the 25th day of November, 1869.

S. M. SHOEMAKER *against* JA'S S. FRENCH, AND JA'S S. FRENCH *against* S. M. SHOEMAKER. } Equity bill & cross-bill.

On motion of S. M. Shoemaker, the order made in this cause on 23d

inst. setting it for hearing on the 3d of Dec'r next, is hereby rescinded, and the cause for hearing is continued to the 15th of December, 1869.

And it is further ordered that the answers and interrogatories of the witnesses in this cause be recommitted to examiner F. L. Smith, jr., who will proceed to take the depositions of such witnesses as may be produced before him by either party, in such manner and mode as is prescribed by the 67th rule of the Supreme Court, as amended, & that said examiner proceed without delay to execute this order; that said
155 Shoemaker shall have the right to examine the witnesses already examined; and the motion of said French to dissolve the injunction as specified in his notice of the 24th inst. and acknowledged by the counsel of said Shoemaker, is continued to the said 15th day of Dec. next.

And at another day, to wit, Tuesday the 3d day of May, 1870—Chief Justice S. P. Chase, presiding:

Came again the parties, by their counsel, and thereupon the matters of law arising in this case being fully argued, and the court not being now advised of its judgment to be given in the premises, time is taken to consider thereof.

156 33.—*Final decree of Chief Justice.*

And now at this day, to wit, June 21st, 1870, being the same day and year first herein mentioned.

Circuit court of the United States, fourth circuit, & district of Virginia.

S. M. SHOEMAKER
v.
J. S. FRENCH. } Original bill.

J. S. FRENCH
v.
S. M. SHOEMAKER. } Cross bill.

Decree.—By Chief Justice Chase presiding.

This cause coming on to be heard upon the bill, answer, and replication, and upon the cross-bill, answer, and replication, and upon the proofs, and having been maturely considered, the court is of opinion that the equity of the case is with the complainant in the original bill; and thereupon, do order, adjudge, and decree, that James S. French, the defendant in the original bill, be perpetually enjoined and restrained, from any use of the name or title of the president of the Washington and Alexandria Railroad Company, under any election to that office heretofore held; and from any action by himself, or any attorney, or agent, to interfere with any proceeding for the reorganization of the said company under the contract mentioned in said bill, and dated on the 6th of December, 1867; and from any proceeding whatever not in accordance with the said contracts; without prejudice, however, to the right of the said French to the stock assigned to him by said contract, or to assert any claim he may have against said company reorganized under said contract, or against the said Shoemaker, or against the Adams Express Company, not in contravention of the said contract; or to pursue by proper proceedings in law or equity, any claim he may have in respect

to the distribution of stock made in and by said contract, founded upon the failure of consideration or other cause.

It is further ordered, adjudged, and decreed, that the said de-
157 fendant, French, pay the costs in this cause.

And leave is given to either party to apply at the foot of this decree for such further order as may be necessary to its due execution, or as may be required in relation to any matter not finally determined by it.

(Indorsed:) Cir. c't U. S. dist. of Virginia. S. M. Shoemaker v. J. S. French. J. S. French v. S. M. Shoemaker. Decree.—June 20, '70. Ent'd June 21, '70.

158 *Samuel M. Shoemaker vs. James S. French, on original and cross-bill. In the circuit court of the United States for Virginia. Opinions and decrees of Chief Justice Salmon P. Chase, in relation to the matter of the title to the Alexandria and Washington Railroad.*

159 Circuit court of the United States, fourth circuit, and district of Virginia.

S. M. SHOEMAKER *vs.* J. S. FRENCH. } Original bill.

J. S. FRENCH. *vs.* S. M. SHOEMAKER } Cross-bill.

Opinion of the court by Chief Justice Chase.

We have carefully examined and considered the pleadings and proofs in this cause. They are very voluminous, and we shall not attempt an analysis of them here, but state the general propositions and conclusions which seem to us fairly established.

The general controversy turns upon two written instruments, dated December 6, 1867. The first of them purports to be "an assignment by French to Shoemaker in consideration of five thousand dollars" of "all his right, title, interest, claims, and demands whatsoever in and to the property, stock, road, road-bed, franchise, and charter of the corporation known as the Alexandria & Washington Railroad Company, formed under and by authority of an act of assembly of Virginia passed February 27, 1854," for the following purposes, viz: (1st,) to secure the payment of five thousand dollars due said Shoemaker as an advance on the same; and (2d) for the purpose and objects set forth in an agreement bearing even date herewith between said French, Lenox, Shoemaker, Oscar A. Stevens, J. Dean Smith, George W. Brent, and W. Jackson Phelps. Upon this instrument was endorsed the following agreement and consent:

"We, the undersigned, do hereby agree and consent to the terms and conditions of the within assignment. Signed—O. A. Stevens, W. J. Phelps, J. Dean Smith, George W. Brent, Walter Lenox." The other instrument purports to be an agreement "under seal" in consid-
160 eration of the respective covenants and agreements between the parties, "and is signed and sealed by all the parties to 'the assignment.'"

Its stipulations, in substance, are, (1st,) that French and Lenox will convey all their right, title, and interest in the Alexandria & Washington Railroad Company to a corporation to be formed as specified, or to devote all of that interest to the common benefit of the parties, in the proportion specified, should the Washington & Alexandria Railroad be revived and the corporation by that name again come into existence; (2d,) when the parties shall have agreed to reorganize and shall actually reorganize that company, or shall organize another company on the basis of the title of French and Lenox, Stevens and Phelps agree to assign to the company all their interest as lessees of the Washington, Alexandria, & Georgetown Railroad Company, or hold the same for the exclusive use of the parties to the agreement, according to their respective interests; (3d,) Shoemaker, for himself and Adams Express Company, covenants to aid the corporation to be formed or reorganized by money and credits—that is, to pay, settle or compromise all liabilities of the Washington & Alexandria Railroad Company, the liabilities of the lessees of the Washington, Alexandria & Georgetown Railroad Company for stock and materials for the road, and all the bona fide liabilities incurred by them in behalf of the road; Shoemaker to be substituted in all rights of creditors paid by him; all compromises to be for benefit of all the parties or the new organization; no advances to discharge liens to be refunded until final end of litigation; a majority in interest to have the right to substitute other securities for any thus acquired by him; and the net receipts of the company to be formed or reorganized to be devoted to reimburse the advances made by him, except 20 per cent. of the receipts, to be divided among the parties to the agreement in proportion to their interests; (4th,) the agreement to be carried into effect on the rendition of the decree of the Alexandria County circuit court in the case of The Washington & Alexandria Railroad Company vs. The Washington, Alexandria & Georgetown Railroad Company, and the new company to be formed or reorganized with a capital stock of 3,000 shares, to be divided among the parties thus: French and Lenox, 1,250; Stevens and Phelps, 850; S. M. Shoemaker, 500; J. Dean Smith, 200; Geo. W. Brent, 200; (5th,) lessees to be continued under
161 new corporation as general superintendent and manager, receiving $250 per month each until otherwise ordered by board of directors, as to salary.

The circumstances in which this agreement originated may be stated as follows:

Under the charter granted by Virginia in 1854, French and Lenox subscribed for the whole stock of the Washington and Alexandria Railroad Company, French taking three-fourths and Lenox one-fourth. They expended very little, if any, money of their own in its construction; but raised large sums by borrowing, and incurred considerable debts for materials and supplies. When, therefore, the road was built from Alexandria to the Potomac River bridge on the Virginia side, opposite Washington, the company was seriously embarrassed. A deed of trust dated April 18, 1855, to secure $60,000 to the city of Washington; another dated April 30, 1855, to secure $14,849 50 due Fowle, Snowden & Co.; another dated July 16, 1857, and executed to Walter Lenox, as trustee, to secure bonds to the amount of $30,000, issued to raise money for the purposes of the road, constituted the largest part of this indebtedness. Another large part was made of judgments against the company.

The civil war broke out when the road was in this condition. French and Lenox went South; the United States took possession of the road

and used it for military purposes until 1865, when French and Lenox returned, having been disabled by the condition of the country and by the military possession of the road from asserting, in the meantime, their title to the property.

During their absence, a proceeding had been instituted in the Alexandria County court for the removal of Lenox as trustee in the third deed of trust, which resulted in an order for such removal, and for the substitution of one Stewart as trustee in his place, who proceeded in alleged conformity to the deed of trust to sell the railroad.

Under the sale thus made, a new company was organized, which assumed the name of the Washington, Alexandria, & Georgetown Railroad Company; and this company, when the Government relinquished the road in 1865, took possession of it at once; and not long afterwards, on the 1st of February, 1866, entered into a contract with Adams' Express Company in relation to the conveyance of express freight, and the furnishing by the latter of means to operate the road. This
162 contract did not prove satisfactory, and by consent of both parties, a lease for ten years was made to Stevens and Phelps on the 5th of May, 1866; and on the 18th of the following June, another contract for means of operation and for the conveyance of express freight was made for ten years with the Adams Express Company.

Litigation soon arose upon this lease and upon these contracts. One Davison, claiming to be a stockholder of the Washington, Alexandria, and Georgetown Railroad Company, filed his bill in the Alexandria County circuit court in November, 1866, alleging that the lease was made without authority, and in fraud of the rights of the stockholders, and praying that it might be set aside and annulled. The Adams Express Company filed its bill about the same time, or very soon afterwards, in the circuit court of the United States for the district of Virginia, praying for the enforcement of its contract with the company and with the lessees.

The Washington and Alexandria Railroad Company had already, on the 28th of March, 1866, filed its bill in the Alexandria County circuit court asserting its title to the road, charging fraud in the whole proceeding for the organization of the Washington, Alexandria, and Georgetown Railroad Company, and praying that it might be declared null and void, and that a decree might be made establishing its own original title to the road as unimpaired by that proceeding.

All these suits, with others that need not be referred to, were pending at the time the two instruments were executed which have given occasion to the suits now before us.

These instruments must, in this controversy, be regarded as one. The one called the agreement had been drawn up really a year before the other; and French, during that time, had refused his signature to it; but, at length, the one called "the assignment" was agreed to by all the parties, and executed on the 6th of December, 1867, and the other, having been dated the same day, was signed by French. It had been previously signed by the other parties.

The effect of this transaction was to vest in Shoemaker the entire interest of French in the Washington and Alexandria Railroad Company as security to himself and the Adams Express Company for the repayment of the five thousand dollars then advanced, and the sums to be thereafter advanced in payment of the liabilities of the company
163 and of the lessees incurred on account of the road, and as security to all the parties for the performance of the covenants contained in the agreement, and especially for the reorganization of the company

upon the rendition of a decree by the Alexandria County circuit court establishing its title to the road, and for the distribution of the stock of the company among the parties in the stipulated proportions. For the sake of brevity, these instruments may be called the settlement contract of 1867. It was intended as a final adjustment of controversies relating to the Washington and Alexandria Railroad Company, so far as the parties to it were concerned, and as an arrangement for means to liquidate its just liabilities, and put it into successful and profitable operation. The decree, on the rendition of which the contract was to be carried into effect, was rendered in the Alexandria County circuit court on the 28th of August, 1868. This statement will enable us to give intelligibly our views of the nature of the controversy, as shown by the pleadings, and of its merits, as shown by the evidence.

The original bill, after stating the rendition of the decree contemplated by the settlement contract, the alleged equities arising from it, and the action of the parties to it, except French, charges that French had endeavored, and was still endeavoring, to unjustly and fraudulently embarrass and frustrate the execution of the contract; and prays an injunction to restrain him from all action as stockholder or officer of the company, otherwise than in pursuance of his covenants in that contract.

The answer of French admits the execution of the settlement contract, and that he was then and for some time afterwards satisfied with it; but proceeds to allege circumstances of hardship and imposition under which he was induced to become a party to it, and various other matters supposed to show a want of equity in the complainant.

The matters set up in answer are again set up in the cross-bill of French, together with other matter of complaint, as grounds for his prayer that the settlement contract may be annulled and the parties to it be restrained from all attempts to enforce any pretended rights under it.

The answer of the original complainant to this bill denies every substantial allegation of fact on which relief against the contract is claimed.

We will proceed to consider such points made by these pleadings as seem to require particular examination.

And first, we will notice the point taken in the cross-bill,
164 that Stevens and Phelps are necessary parties to the original bill.

These persons were lessees of the Washington, Alexandria, and Georgetown Railroad Company, and had disbursed large sums of money in operating the road, and had received the income derived from it. The settlement contract states their character as lessees distinctly, and stipulates for the surrender by them, upon the contemplated reorganization of the Washington and Alexandria Company, of all their rights under their lease, and for the payment, by the complainant, of the liabilities incurred by them. It stipulates, also, upon the reorganization they shall become, one the general manager, and the other the superintendent, of the road.

Now, it is quite clear that if the original bill sought any relief as against Stevens and Phelps, or any aid from the court in carrying into effect the settlement contract as to them, it would be necessary to make these persons parties.

But such is not the case. The bill seeks no relief as against them. There does not appear to be any controversy between them and the original complainant. And we cannot see that the cross-complainant has a right to have any controversy he may have with them settled in this suit. It is very certain that at the time the settlement contract was made he had no cause of complaint against them. Nothing, so far

as they were concerned, appears to have been concealed from him. The plain language of the agreement, which he had before him nearly a whole year, stated their relation, and gave all the notice of circumstances connected with them which a court of equity will require. If their subsequent conduct affords ground of complaint, it must be in regard to the stock assigned to them; but this may be, and should be, as we think, submitted to judicial scrutiny, in a proceeding founded on the settlement contract; not hostile to it.

The objection that Stevens and Phelps are not made parties to the original bill must therefore be overruled.

This brings us to the objection taken by French to the settlement contract, and these may be divided into two classes:

I. Objections founded on acts of the complainant and other parties to that contract prior to its date.

II. Objections founded on transactions subsequent to its date.

165 Objections of the first class may be distributed under two heads:

I. That the defendant, French, was induced to sign the settlement contract by coercion or imposition.

II. That an important stipulation, agreed on before the execution of the contract, was not embodied in it,

Of the first of these objections it is hardly necessary to say more than we do not think it sustained by the evidence. French doubtless was in want of money, and it is not improbable that this want was the prevailing consideration with him when he finally determined to sign the contract. But it does not appear that either the complainant or the Adams Express Company or any of the parties to the contract were responsible for this. He was not excluded from the possession of the road by them, but by the Washington, Alexandria and Georgetown Railroad Company, organized under the sale by the substituted trustee. The Adams Express Company and the complainant and Stevens and Phelps had arrangements with that company, but we find no sufficient evidence that they were concealed from French. Nor, indeed, do we perceive how they could be, for they were all exposed in the various litigations then pending, and were pointed at directly in the stipulations of the settlement contract in relation to Stevens and Phelps.

This proof falls far short, as we think, of sustaining either the charge of coercion or imposition.

Nor does the second objection seem to be better sustained. The substance of it is, that it was originally agreed that the sum of twenty thousand dollars should be paid to French, and ten thousand to Lenox, as advances in consideration of their assent to the arrangement.

This is expressly denied by the complainant in his answer to the cross-bill, and it seems to us apparent that whatever foundation there may have been for such an impression on the part of French must be found in conversations long before the final execution of the settlement contract. The assignment part of that contract was then originally drawn up, the other part having been drawn nearly a year before. In this assignment part provision is made relating to an advance of five thousand dollars, made at or about the time the contract was executed. We find no evidence of any other advance stipulated. There were propositions, discussions, but nothing agreed upon as part of the contract.

166 The second objection, therefore, fails equally with the first. We do not perceive sufficient evidence that the contract, when it was made, was not entirely fair and reasonable.

French and Lenox, as sole corporators of the Washington and Alex-

andria Railroad Company, were owners of the so-called capital stock of a short line of railroad from Alexandria to Washington, or rather to the south bank of the Potomac, opposite Washington. So far as appears, they had invested no capital of their own in its construction. It was involved very nearly, as it seems, to the extent of its value in debt. Another organization was in possession of the road, claiming adverse title as the lawful successor of the old corporation which they represented. The old corporation had instituted suit against the new; but, if successful in that suit, the two stockholders would be still without means to pay off its debts or provide for the working of the road. Under these circumstances nothing was more natural than that they should seek the coöperation of capitalists; and nothing more natural than that the capitalists interested, as were the express company and its superintendent, in a business which required the services of the road, whichever company might be adjudged the rightful owner, should make arrangements with both for such services and for advances. The arrangement actually made with French and Lenox, unless tainted by concealment of the relations of Shoemaker and the express company to the party holding adverse possession, or by actions of bad faith to French and Lenox in their connections with that party, cannot be impeached as fraudulent. And there is no evidence, as we think, which sustains any imputation of bad faith or fraud in any transaction prior to the arrangement or in the arrangement itself.

We come, then, to objections set up to the settlement contract, or rather to the enforcement of that contract as against French, founded on transactions subsequent to its date.

And these may be stated under three heads:

1. That Smith and Brent, after agreeing to receive certain shares of stock under the settlement contract for services to be rendered in establishing the title of the Washington and Alexandria Railroad Company, acted professionally adversely to that company.

2. That Stevens and Phelps took an appeal from the decree of the Alexandria County circuit court against the validity of their lease in the Davison suit.

167 3. That no advances were made by Shoemaker or by the Adams Express Company to defray the expenses of the litigation for the establishment of the title of the Washington and Alexandria Railroad Company as against the Washington, Alexandria and Georgetown Railroad Company; that no payment was made to French on account of the twenty per cent. reservation of earnings stipulated for in the contract; and that no payment was made to him in satisfaction of claims held by him against the company.

We will briefly consider these objections in their order.

It may be well questioned, indeed, whether acts of other parties to the settlement contract, other than the express company or Shoemaker, would affect the right of either of them to have it carried out, in the absence of proof affecting them with complicity. But it is not necessary to consider this question here.

First, then, as to Smith and Brent. We find nothing in the proof which establishes against either of these gentlemen any participation in litigation adverse to the title of the Washington and Alexandria Railroad Company.

It is true that both were professionally engaged, after the settlement contract, in litigation against French, but this was after he repudiated the settlement contract and commenced a course of hostile action against the other parties to it. And this litigation, in support of that contract,

was a very different thing from litigation against the Washington and Alexandria Railroad Company, or against any right of French as stockholder under his original subscription and under the contract.

Next, as to Stevens and Phelps. It is clear upon the face of the settlement contract that their rights as lessees of the Washington, Alexandria, and Georgetown Railroad Company were regarded as valuable to the parties to the settlement contract; and it is in proof that French desired that they should appeal from the decree against the validity of their lease. We cannot think that the mere fact that the appeal was taken affects the contract itself, or any right under it. And there is no proof of anything else done by them affecting any right or interest under the contract, unless it was in filing their answers in the Alexandria County circuit court in the suit involving the title of the Washington, Alexandria and Georgetown Railroad Company. If they did in fact, directly or indirectly, attempt to defeat the title of the Washing-
168 ton and Alexandria Railroad Company, or the rights of the original stockholders as recognized in the contract, that may be good ground for denying to them the benefits of the contract. But these are matters proper for another suit in a court to the jurisdiction of which they may be made amenable.

The remaining question relates to the alleged failure of the complainant and of the express company to advance money for the expenses of the litigation in which the Washington and Alexandria Railroad Company was engaged for the establishment of its title; to cause twenty per cent. of the net earnings to be divided according to the agreement, or to pay to the defendant, French, any part of the claims asserted by him against the company.

It is to be observed that the contract contains no stipulation for the advancement of moneys to defray the costs of litigation. It recites a general advance to French of five thousand dollars, as one of the considerations of the contract; but it contemplated no further advance until after the rendition of a decree by the Alexandria County circuit court establishing the title of the Washington and Alexandria Railroad Company. Nor did the contract contemplate any distribution among the parties to it of the twenty per cent. of net receipts until after the reorganization of the company subsequent to that decree. Still less, if possible, did the contract contemplate any payment to French on account of claims held by him against the company before decree, and before reorganization, and without proof of validity.

It is clear, therefore, that no default prior to the decree can be imputed to the complainant or to the express company.

The contract was made on the 6th of December, 1867. The decree was rendered on the 28th of August, 1868, about eight months afterwards. If, at that time, French had shown himself willing and ready to fulfill the contract on his part, claiming only such modification as to interests of particular parties under it as the acts of those parties since its execution should show to be equitable, and the complainant or the express company had then refused to perform the contract, or had sought to evade any obligation under it, a case might have been made calling for the interposition of a court of equity in his favor.

But the proof shows a very different case from this. It shows that, within a few days after the decree, Lenox, interested like French,
169 though in less amount, as a stockholder of the original corporation, and holding the position of secretary, called a meeting of the parties to the contract, to be held on the 19th of September, 1868, to take into consideration their respective interests. Due notice was

given of this meeting to French, as well as to all the other parties, and it was fully attended. French was present, and, through his attorney, made substantially the same objections to the enforcement of the contract as are made by his answer and cross-bill. The validity of them was not admitted. Subsequently, under a similar notice, a meeting for the reorganization of the company was held on the 29th of October, 1868.

Two days before this meeting the bill in this cause was prepared and sworn to, and exhibited to the district judge of the United States at chambers, and an order made by him for the writ of subpœna and for service of the bill and order, and that the defendant, French, show cause, by a day specified, why an injunction should not be allowed. Copies of the bill and order were accordingly served on French on the same day. He was thus fully advised of the claims of the parties to the agreement other than himself; that no objection was made to his rights as a stockholder under the agreement, or to any lawful demands by him against the company, but that the agreement was insisted upon as a valid contract, under which it was his asserted duty to participate in the reorganization of the corporation, and unite in all proper efforts to put it, under this reorganization, in possession of the road.

French did not, however, think proper to acquiesce in this view. He not only refused to attend the meeting of the 29th of October, but endeavored, in disregard of the bill and order which had previously been served upon him, to prevent the proceeding for reorganization by means of an injunction of a State court.

The meeting was, however, regularly held, and the company was regularly reorganized in pursuance of the contract; and counsel have properly refrained from arguing that any objection can be taken to the sufficiency of this proceeding other than such as lie against the enforcement of the contract itself. But we have already expressed our opinion that the contract was valid, and that no subsequent circumstances have occurred which will justify a court of equity refusing to enforce it. We are, therefore, unable to sustain the objections arising subsequent to the settlement contract more than those arising before its execution.

170 There is much in the voluminous pleadings and proofs which we have not thought it necessary, in this opinion, to notice. We have passed without observation much evidence in respect to the sale of the Washington & Alexandria Railroad and its custody, much in relation to the controversies between the two companies in relation to their respective titles, and to the part alleged to have been taken or obligation alleged to have been assumed by the express company or the complainant, Shoemaker, adverse to the right and interest of the Washington & Alexandria Railroad Company; much in relation to the claims of parties and discussion concerning them prior to the final execution of the settlement contract, and much more, perhaps, which counsel may consider as important to a correct decision. But we have carefully considered the whole; and if we have not particularly noticed these and other matters of controversy, it is because we think that the substantial merits of the litigation are covered by the views which we have taken, and do not think there are any solid grounds in the other matters introduced into the case for any change of these views.

On the whole, therefore, we conclude that the injunction heretofore allowed in this cause must be made perpetual, so far as it restrains any proceedings of the defendant, French, contrary to the contract of December 6, 1867, without prejudice, however, to his right to assert any claim he may have against the company reorganized under that con-

tract, or against the complainant, Shoemaker, or the Adams Express Company, under that contract, or to assert by proper proceeding any right which he may have in respect to the distribution of stock made by the contract, founded upon failure of consideration or other cause.

A decree will be made accordingly.

A true copy. Teste:
[SEAL.] W. H. BARRY, *Clerk.*

171 At a regular term of the circuit court of the United States for the district of Virginia, held at the court-room, in the custom-house, in the city of Richmond, in said district, on the 1st Monday of May, in the year of our Lord one thousand eight hundred and seventy, and continued to this 21st day of June, A. D. 1870:

Present, Hon. Salmon P. Chase, Chief Justice United States, presiding.

S. M. SHOEMAKER
vs.
J. S. FRENCH. } Original bill.

J. S. FRENCH
vs.
S. M. SHOEMAKER. } Cross-bill.

Decree.

This cause coming on to be heard upon the bill, answer, and replication, and upon the cross-bill, answer, and replication, and upon the proofs, and being maturely considered, the court is of opinion that the equity of the case is with the complainant in the original bill, and thereupon do order, adjudge, and decree that James S. French, the defendant in the original bill, be perpetually enjoined and restrained from any use of the name or title of the president of the Washington and Alexandria Railroad Company under any election to that office heretofore held, and from any action by himself or any attorney or agent to interfere with any proceeding for the reorganization of the said company under the contracts mentioned in said bill, and dated on the 6th of December, 1867, and from any proceeding whatever not in accordance with the said contracts, without prejudice, however, to the right of the said French to the stock assigned to him by said contract, or to assert any claim he may have against said company reorganized under said contract, or against the said Shoemaker, or against the Adams Express Company, not in contravention of the said contract, or to pursue by proper proceedings in law or equity any claim he may have in respect to the distribution of stock made in and by said contract, founded upon the failure of consideration or other cause.

It is further ordered, adjudged, and decreed, that the said defendant, French, pay the costs in this cause, and leave is given to either party to apply at the foot of this decree for such further order as may be necessary to its due execution, or as may be required in relation to any matter not finally determined by it.

A true copy. Teste:
[L. S.] W. H. BARRY, *Clerk.*

172 Circuit court of the United States, fourth circuit, and district of Virginia.

S. M. SHOEMAKER
vs.
J. S. FRENCH. } In equity.

Opinion of the court by Chief Justice Chase.

The matter now submitted for consideration arises upon a petition for the remission of certain fines imposed for contempt of the order of this court by the district judge sitting in this cause at chambers.

The case in substance is this: The Alexandria Railroad Company commenced in the Alexandria County circuit court a suit in equity against the Washington, Alexandria and Georgetown Railroad Company for the purpose of establishing its title to the railroad from Alexandria to Washington, possession of which had been usurped by the defendant, a corporation irregularly and fraudulently organized upon a pretended but fictitious title. There were numerous parties, plaintiffs and defendants, to this suit who need not be mentioned.

The court decided the substantial controversy in favor of the complainants, and decreed the restoration of the road; and, on appeal, this decree was affirmed by the court of appeals of Virginia.

In the bill the complainant described itself as the Washington and Alexandria Railroad Company, by James S. French, president.

While this suit was pending the Adams Express Company commenced a suit in this court against William H. Marbury, the Washington, Alexandria and Georgetown Railroad Company, and others, in which an order was made by this court for the appointment of receivers of the road, who were in possession under the order when the decree in the case of The Washington and Alexandria Railroad Company vs. The Washington, Alexandria and Georgetown Railroad Company was affirmed by the Virginia court of appeals.

The Adams Express Company was not a party to the suit in the State court, nor was the Washington and Alexandria Railroad Company a party to the suit in the Federal court.

The road, however, was in the possession of the officers of the national court, who could not be rightfully displaced, except by an order of the court which appointed them.

173 A third suit was commenced in this court by S. M. Shoemaker against J. S. French, the object of which was to restrain French from acting as president of the Washington and Alexandria Railroad Company, personally or by any agent, or in any way contrary to the intent of certain contracts to which he was a party, dated December 6, 1867. In this suit an injunction was allowed, and a cross-bill was filed by French, setting up counter equities. A decree has now been made in this case perpetuating the injunction, under some modifications.

During the progress of these various litigations the Washington and Alexandria Railroad Company was reorganized; and upon a new election of officers Samuel M. Shoemaker was chosen president, and certain other parties directors, but the validity of this reorganization and of the new election was contested by the former president, French, and the members of the old board. The questions thus arising were litigated in a suit pending in this court, to which Shoemaker and French were parties by bill, cross-bill, answers, replications, and evidence.

In this state of things, upon the petition of Shoemaker, as president

of the Washington and Alexandria Railroad Company, and with the consent of the complainants, an order was made in the case of The Adams Express Company vs. Marbury and others, discharging the receivers appointed for the custody of the road, and directing them to deliver possession, according to the prayer of the petitioner, to the Washington and Alexandria Railroad Company, without prejudice, however, to any party or interest in the case of Shoemaker vs. French.

This order was clearly intended to place the road temporarily under the control of the corporation represented by the new president and officers.

It would have been according to the usual practice in equity to require sufficient bond to secure the contestants of their title against damage, but this was matter of discretion with the judge.

On the day when the order was made, the sheriff of Alexandria County, having in his hand a writ of possession from the Alexandria County circuit court, previously issued under the decree affirmed by the court of appeals, and requiring him to put the Washington and Alexandria Railroad Company in possession of the road, made a return on the 22d of March, 1870, reciting that the road had been delivered
174 by the receivers to Shoemaker as president, in pursuance of the order of the circuit court of the United States, and declaring the writ in his hands "executed as per indorsement above."

The effect of this return was the adoption and recognition by the sheriff of the act of the receivers under the order of this court as his own act. Thus, by the concurrent action of the officers of this court and the officers of the State court, the road was put into the possession of the corporation under the organization represented by Shoemaker.

Upon the filing of this return in the State court, Nathaniel Bush and George H. Robinson, claiming to be directors of the Washington and Alexandria Railroad Company, by their counsel, H. O. Claughton and L. B. Taylor, applied to that court to set aside this return, and order a new writ of possession, stating at the same time the existence of the injunction of this court in the case of Shoemaker vs. French. This order was made, the new writ was issued, and the parties holding under the order of this court were summarily turned out of possession. The injunction against French was then in full force; and though such an injunction is probably inoperative to restrain proceedings by suitors in a State court in a suit brought before the suit in which the injunction is allowed, it was entitled to respect and obedience by French, or any person acting under or in concert with him to procure a supplementary order or direction not resulting necessarily from a decree or judgment in a prior suit.

And this was the character of the proceeding now instituted. In form it was not a proceeding by French; but we must shut our eyes to the character of the whole litigation, if we would exclude the perception of the fact that the whole proceeding was upon his prompting, and under his direction. In substance, it was an attempt to give to a decree in favor of the railroad company, an operation in favor of one set of contestants for the control and direction of its affairs. In this view it was substantially a new proceeding. It is claimed, indeed, that the suit on which it was engrafted was by French as president. But this was not so. The suit was by the railroad company. The introduction of the name of the president in office when the suit was brought into the description of the company proved nothing. It was mere surplusage. The company might change its officers repeatedly while the

suit was pending, and upon final decree in its favor the officers then existing would be entitled to whatever rights had been adjudged to the company.

175 What was done by French, or rather upon his suggestion, in this case was prohibited by the injunction, and if done with knowledge was in contempt.

It is unnecessary to consider another view in which the disregard of the order of this court is justly liable to censure. The road, when the second writ of possession was issued, was in possession of Shoemaker, as president of the company, subject, however, to the result of the litigation in the suit of French against him. The corporation under his presidency was, in fact, a substituted receiver, and no receiver in possession under the order of one court can be rightfully interfered with under the direction of another.

The propriety of the order discharging the former receivers and putting the corporation under either set of officers in possession may perhaps be questioned, but the proper place to question it was in the court where it was made, and not in another jurisdiction.

The inference from what has been said is, that the proceeding of the petitioner now before the court was technically, at least, in contempt of the jurisdiction and order of this court. But intentional contempt is earnestly disclaimed in the petition for remission. The counsel concerned expressly declare that they acted under a full conviction that they were simply maintaining, by rightful action, the rights of their clients. The complicated character of the litigations may, at least, excuse this conviction, and it had support in the views taken by the court whose decree the writ of possession was intended to enforce, and their clients acted under their advice. Under these circumstances, and being well assured that no future similar interference with the orders of this court will be attempted, we have determined to remit the fines heretofore imposed, and they are accordingly remitted.

A true copy. Teste:
[SEAL.] W. H. BARRY, *Clerk.*

176 At a regular term of the circuit court of the United States for the district of Virginia, held at the court-room in the custom-house, in the city of Richmond, in said district, on the 1st Monday of May, in the year of our Lord one thousand eight hundred and seventy, and continued to this 21st day of June, A. D. 1870.

Present: Hon. Salmon P. Chase, Chief Justice United States, presiding.

S. M. SHOEMAKER
vs.
J. S. FRENCH.

Order.

On the consideration of the petition of James S. French, Nathaniel Boush, and George H. Robinson, H. O. Claughton and L. B. Taylor, filed in this cause for the remission of the fines heretofore imposed for violation of the injunction heretofore allowed, the court is of opinion that under the circumstances and upon the statements made by the petitioners the said fines may be properly remitted.

It is therefore ordered that the said fines, so far as the same have been paid, be refunded to the several parties by whom paid, and so far as the same remain unpaid that they be remitted and discharged.

It is further ordered that the costs of this proceeding on petition and of the proceeding for contempt be paid by the petitioners.

A true copy. Teste:
[SEAL.] W. H. BARRY, *Clerk.*

(Indorsed:) Shoemaker vs. French. Opinion of Chief Justice Chase & decree.

177 35.—*Order for appeal.*

And at another day, to wit, Thursday, the 23d day of June, 1870—

Came the defendant, by his counsel, and moved the court for an appeal to the Supreme Court of the United States from the judgment and decree entered against him at the present term.

Whereupon it is ordered by the court that the said appeal be allowed upon the defendant giving bond, with good and sufficient security, in the sum of $500, and conditioned according to law.

178 36.—*Order.*

In the circuit court for the United States for the State and district of Virginia.

THE ADAMS EXPRESS COMPANY, PL'T'FFS,
vs.
WILLIAM H. MARBURRY, ET AL., DEF'TS.

It appearing to the court, on petition and affidavit, that the order entered in this cause on the 22d day of August, 1868, has been violated by the seizure of the road of the Washington, Alexandria and Georgetown Railroad Company by one James S. French, and James M. Stewart, and have expelled therefrom Oscar A. Stevens and W. Jackson Phelps, the receivers of this court under the order aforesaid; it is, therefore, on motion of said complainants, ordered that the said James S. French and James M. Stewart do appear before me, one of the judges of the said court, at chambers, at 10 o'clock a. m. to-morrow, (Thursday,) the 1st day of October, at the court-room of the United States district court, in the city of Alexandria, to show cause why said road should not be restored to the receivers, and they, the said French and Stewart, fined and attached for a contempt for disobeying the order of this court.

(Signed) J. C. UNDERWOOD,
District Judge.

SEPTEMBER 30TH, 1868.

A true copy. Test:

J. C. HEWES, *D. M.*

179 (Indorsed:) Copy of summons to appear before Judge Underwood for taking possession of road. Exhibit O. Filed May 31, 1869. W. H. Barry, clerk.

180 37.—*Petition to remit fines.*

To the honorable the judges of the circuit court of the United States for the district of Virginia:

Your petitioners, Jas. S. French, Nathaniel Boush, and Geo. H. Robinson, as president and directors of the Alexandria and Washington Railroad Company, and H. O. Claughton and L. B. Taylor, as their attorneys, respectfully represent that, on the 22nd day of March, 1870, in the case of the Adams Express Co. vs. Marbury & others, pending in this court, an order was made by the Hon. Jno. C. Underwood, judge, &c., discharging the receivers in the said case, and directing them to deliver the railroad and property, held by them as receivers, to the Alexandria and Washington Railroad Co. For the exact terms of this order your petitioners refer to the same as remaining of record in this court; but they state that said order expressly declares that said receivers were no longer necessary, and which said order was made in deference to, and in pursuance of, a final decree rendered by the supreme court of appeals of the State of Virginia, on the 14th day Feb'y, 1870, in the case of the Alexandria and Washington Railroad Co. vs. The Washington, Alexandria and Georgetown Railroad Co. and others, and that it was by the consent of the Adams Express Co., the complainants in this suit, and upon the petition of Sam'l M. Shoemaker and his associates. A copy of the said decree of the court of appeals of Virginia is herewith filed as part of this petition.

181 Your petitioners further represent that, afterwards, to wit, on the 10th day of March, 1870, the said S. M. Shoemaker and his associates, claiming to be the president and directors of the Alexandria and Washington R. R. Co., procured to be issued from the circuit court of the county of Alexandria, Va., a writ of possession ordering the said railroad to be delivered to the said company; and thereupon the aforesaid receivers, O. A. Stevens and W. J. Phelps, delivered the said road and all the property appurtenant to the same, to the said Shoemaker and his associates.

Your petitioners, Boush, Robinson, and others, applied to the Hon. Lysander Hill, then judge of the said circuit court of Alexandria County, Va., stating the injunction in this court against French, as president of the company, and asking for an order directing the clerk of said court to issue an alias execution at the request of the petitioners as the true and proper representatives of the company; and thereupon the said judge, on examination of the record of the case in which the writ had been issued, and of the aforesaid final decree of the court of appeals which was rendered in appeal in the same case, considered that your petitioners, French, Boush, and Robinson & others, were the only true and proper representatives of the said company, and were entitled to the possession of the said road and property; and thereupon the said judge ordered the said clerk to issue the said alias execution to the

182 sheriff of the county, which act was duly executed by delivering possession of the said road to the proper parties who were known to the records of that court as the rightful company, to wit, your said petitioners.

And now your petitioners further represent that, afterwards, on the petition of the said S. M. Shoemaker and his associates, the Hon. Jno. C. Underwood, one of the judges of this court, issued an order summoning all your petitioners to appear before him at chambers, in Alexandria, on the day of , and show cause why they should not be punished for contempt in interfering with the order of this court made on the 22nd Feb'y, 1870, as first above stated. And when your petitioners

appeared and made answer to the said last-mentioned rule, a copy of which is filed herewith, and prayed to be read as part hereof, his Honor Judge Underwood considered that they had interfered with his order discharging the receivers and turning over the road to the Alex. and Washington R. R. Co., and had been guilty of contempt in so doing; and thereupon the said judge imposed a fine of $40 upon each one of your petitioners, all of which fines have been paid, with costs, except that imposed on the said French.

Your petitioners further most respectfully represent that the order of this court, made as aforesaid, on the 22d February, 1870, did expressly discharge the receivers on the ground that they were no longer
183 needed, and did also declare that it was not intended to decide the question of right between the said Shoemaker and his associates on the one part, and your petitioners, French, Boush, and Robinson on the other.

Your petitioners, by their counsel, the said Claughton, Taylor, and others, utterly denied that any contempt was either intended or actually committed by any of their proceedings aforesaid, inasmuch as this court, by its order aforesaid, had discharged the receivers, and had fully remitted the property previously held by them under the authority of the court to the lawful owners thereof.

Your petitioners honestly believed, and still do believe, that the State courts which had adjudicated the case of the Alexandria and Washington R. R. Co. vs. The Washington, Alexandria, & Georgetown R. R. Co., and others, were the only proper tribunals to decide as to how their own process was to be executed, and more especially as the Alexandria and Washington R. R. Co. is not, and never has been, a party to any one of the cases now pending in this court. But in the decision made by his Honor Judge Underwood, fining your petitioners for contempt, your petitioners understood him to hold that, in the said order of the 22nd Feb'y, 1870, this court had not actually discharged the receivers, but had only changed them, substituting the said Shoemaker and his associates on the Alexandria and Washington R. R. Co. for the said Stevens and Phelps, who were the former receivers.

184 Your petitioners most respectfully submit that this is not the purport of the said order, and that it is most harsh and unjust to punish and fine them for not understanding the said order in a sense which is plainly inconsistent with its terms. In the order of this court, which is now assumed to be a mere change of receivers, no security was required of the said Shoemaker and his associates, and they were not named as receivers at all; on the contrary the road was ordered to be delivered to the Alexandria and Washington R. R. Co., and the only reference to the said Shoemaker was in the statement that the order was made upon his petition.

Your petitioners beg leave to file herewith the opinion of the Hon. Lysander Hill upon the question presented to him; and they most respectfully submit that they have not been guilty of any contempt either in intention or in actual fact. They therefore pray that in consideration of the premises, this honorable court will reconsider its action in the premises and will remit and release the said fines as unadvisedly imposed, and order the same to be repaid so far has the same has been collected.

And your petitioners, as in duty bound, will ever pray, &c.

FRED. P. STANTON.
H. O. CLAUGHTON.
JOHN H. GILMER.

185 (Indorsed:) Jas. S. French, Nathaniel Boush, Geo. H. Robinson, H. O. Claughton, & L. B. Taylor. Ex parte. Petition for remission of fines.

186 38.—*Order remitting fines.*

Circuit court of the United States, fourth circuit and district of Virginia.—In equity, June 21st, 1870.

S. M. SHOEMAKER
vs.
J. S. FRENCH. } Order.

On the consideration of the petition of James S. French, Nathaniel Boush, and George H. Robinson, H. O. Claughton, & L. B. Taylor, filed in this cause for the remission of the fines heretofore imposed for violation of the injunction heretofore allowed, the court is of opinion that under the circumstances and upon the statement made by the petitioners, the said fines may be properly remitted.

It is therefore ordered that the said fines, so far as the same have been paid, be refunded to the several parties by whom paid; and so far as the same remain unpaid that they be remitted and discharged.

It is further ordered that the costs of this proceeding on petition and of the proceeding for contempt be paid by the said petitioners.

187 (Indorsed:) Cir. c't U. S. district of Virginia. S. M. Shoemaker v. J. S. French. In equity. Order June 20, 1870. June 21, '70, ent'd.

188 39.—*Notice.*

In the circuit court for the United States, for the district of Virginia.

SAM'L M. SHOEMAKER
vs.
JAMES S. FRENCH. } Original bill.

And

JAMES S. FRENCH
vs.
SAM'L M. SHOEMAKER. } Cross-bill.

To JAMES S. FRENCH, Esq.:

Take notice that I desire the evidence adduced in the above causes be taken orally, and I shall apply to the said circuit court for all witnesses to be examined before an examiner to be appointed by the said court, and that such examination shall take place in the presence of the parties or their counsel or solicitors, and that the witnesses be subject to cross-examination.

Dated Alexandria, November 1st, 1869.

SAM'L M. SHOEMAKER,
By his solicitors, BRENT & WATTLES.

Copy given November 1st, 1869.

R. W. FALLS.

189 (Indorsed:) S. M. Shoemaker vs. James S. French, O. B. Jas. S. French v. S. M. Shoemaker, C. B. Notice to French.

DISTRICT OF VIRGINIA:

This is to certify that R. W. Falls this day personally appeared before me and made solemn oath that on the first day of November, A. D. 1869, in the city of Alexandria, Va., he served the within notice by delivering a true copy thereof to James S. French.

Given under my hand this 23rd day of November, 1869, at Alexandria, Va.

LYSANDER HILL,
Register in Bankruptcy.

190 The following are true copies of the depositions filed in this cause and exhibits and papers therewith.

191 40.—*Deposition of G. W. Brent.*

192 OFFICE OF FRANCIS L. SMITH, JR.,
Alexandria, Virginia, December 8th, 1869.

Present: J. Dean Smith, counsel for Samuel M. Shoemaker; James S. French, appearing in proper person, acting for himself.

Deposition of George W. Brent.

1st question. State what were the relations you held to the Alexandria and Washington Railroad Company, in the litigation with the Washington, Alexandria, and Georgetown Railroad Company. State also, fully, the circumstances which led to the making of a certain contract bearing date the 6th day of December, 1867, between James S. French, Walter Lennox, Samuel M. Shoemaker, O. A. Stevens, W. J. Phelps, and yourself.

Answer. About December, 1865, Messrs. French and Lennox, owning the entire stock of the Alexandria and Washington Railroad Company, sought my professional services for the recovery of said road, which had been sold by J. B. Stewart, as trustee, under an order of the county court of Alexandria, made in February, 1862, substituting him as trustee, in the place of Walter Lennox, in a deed of 1857, to secure thirty thousand dollars coupon bonds, transferred by said company to Benjamin Thornton. I instituted suit, in the name of said company, against the corporation known as the Washington, Alexandria and Georgetown Railroad Company, J. B. Stewart, and others, to set
193 aside his appointment as trustee, and the sale of the said road, made by him as substituted trustee, in April, 1862, during the pendency of this suit. I had constant and frequent interviews with Walter Lennox. Mr. French at this time, was a resident of Tazwell County, Virginia, and I had no opportunity of consulting with him personally. In the interviews with Mr. Lennox, he pressed upon me the necessity of making some arrangement with parties of competent means to carry on said litigation, and in the event of success in said suit of the Alexandria and Washington Railroad Company against the Washington and Alexandria and Georgetown Railroad Company and others, to pay the incumbrances resting upon the Alexandria and Washington Railroad Company. This led to an interchange of views between J. Dean Smith and myself, in relation to an adjustment of the respective

claims of the two companies, and an agreement was made that all should meet and confer together upon the matter. About the latter part of November, during the session of the circuit court, 1866, I gave Mr. French a letter to one of the parties interested in the matter, and calling attention to an understanding for an adjustment of the railroad difficulty. Mr. French went to Washington and had an interview with S. M. Shoemaker, Walter Lennox, Oscar A. Stevens, J. Dean Smith, and R. T. Merrick. This interview took place at the house of R. T. Merrick. I was not present at said interview, and only know these facts from communications made to me by James S. French and the other parties who were present. On the return of Mr. French from Washington, on the day of said interview, he called to see me, and told me that he had made an arrangement with S. M. Shoemaker for an adjustment of the railroad affairs; that Shoemaker had agreed to assume all the liabilities of the Alexandria and Washington Railroad Company, and to carry on the litigation to assert the rights of said company; that he regarded his agreement with said Shoemaker as satisfactory; that it was agreed that in event of his success in the recovery of the road that a new company should be organized, with stock to the amount of three thousand shares, of which Walter Lennox and himself were to receive (1,250) twelve hundred and fifty shares; Stevens and Phelps, (650,) six hundred and fifty shares; S. M. Shoemaker, (500,) five hundred shares, I think; J. Dean Smith, (200,) two hundred shares; R. T. Merrick, (200,) two
194 hundred shares, and myself, (200,) two hundred shares. He expressed himself as highly satisfied with this arrangement, except that he complained that Mr. Merrick and J. Dean Smith should receive each two hundred shares, when they had done nothing. He sought to raise my interest, but could not succeed, and wished to know whether I was satisfied. I replied to him that he and Mr. Lennox were unable to carry on the litigation without means; that the arrangement which he had made was judicious; that it was immaterial whether Messrs. Merrick and Smith got more than he thought they were entitled to; made no difference, either to him or myself, so he received an amount satisfactory to himself and Lennox; so far as I was concerned, I would acquiesce in any arrangement that he might approve. He said that his arrangement was a judicious one, and would prove profitable to all the parties; that I needed means; that when matters were arranged that I could raise money upon my stock, and that he could do the same. A few days after this, Mr. French was called to his home, in consequence of the sickness of a child. Before leaving he spoke of the importance of having the agreement reduced to writing. After his departure and the adjournment of court, Mr. Lennox pressed upon me the necessity of the reduction of said agreement to writing, and at his solicitation a meeting was held at the office of R. T. Merrick, in Washington City, for the purpose of reducing the agreement to writing. At this meeting were present Walter Lennox, J. Dean Smith, Oscar A. Stevens, R. T. Merrick and myself. Mr. Merrick, at the request of Mr. Lennox and the parties who who were present, wrote the agreement. Mr. Lennox and the other parties said that it was in accordance with the agreement which had previously been entered into. It was then signed by Lennox, Smith, and myself. During this interview, and prior to its execution, Mr. Lennox referred to the wants of Mr. French and himself, and that whilst no bonus or advances were to be incorporated in the contract, yet they needed some means for a support, and at his suggestion there was embodied in said contract a provision that a per centum, which was then left blank, to be thereafter agreed upon, should be divided

amongst the parties interested in the stock, when the title of the Alexandria and Washington Railroad Company should be de-
195 cided by circuit court for the county of Alexandria. The date of the contract was left blank; the amount of per centum was left blank. Early in the year of 1867, I met with Mr. French, by agreement, in Richmond, and presented him the original contract, as drawn up by Mr. Merrick. He objected very warmly to signing it, stating that it did not embody his agreement. His prominent objections were that the contract did not recognize certain judgment liens, amounting to about forty thousand dollars, which he claimed had been assigned to him by Alexander Hay; that the contract provided that Stevens and Phelps were made agents of said road, at a salary of two hundred and fifty dollars each, perpetually, without power of revocation. He also claimed that certain advances were to be made to him by Shoemaker. I told him that if the judgments, of which he claimed the benefit, were a legal obligation resting upon the said road, that the contract fully protected him, and the only question was whether he had any legal claim to the benefit of said judgments, and concerning which I had previously advised him he had no title to it; but if he had any just demand therefor, he could assert it under the contract. In regard to Stevens and Phelps, told him that I did not regard the contract as binding forever upon the parties thereto. As soon as the company organized under the contract, would have the power to discharge them. This proviso of the contract was inserted therein at the special instance of Mr. Lennox, who stated that that was a part of the agreement previously agreed upon. Mr. Stevens desired that it should not be inserted, but Mr. Lennox insisted upon it. Up to this time, whilst Messrs. French and Lennox had not advised me of any specific amounts which they hoped to obtain by virtue of their agreement, yet I learned from J. Dean Smith that Shoemaker, knowing their wants and necessities, was ready and willing to advance twenty-four hundred dollars a year to French and Lennox during the pendancy of the litigation. When I presented the contract to Mr. French for his signature, and he spoke that the advances agreed upon had not been inserted in the contract, I told him that I had understood that no advancements on bonus (or bonus ser, to use the language of Mr. Lennox) were to be made part of the contract, but that I felt well assured that Mr. Shoemaker would advance them the amount above indicated. Mr. French still declined to sign the contract, and said that he would see about
196 it on his return to Alexandria. He positively refused to sign the same until about December, 1867, when I was requested by some of the parties interested in the agreement, by whom I do not now recollect, to attend a meeting at the office of the Adams Express Company, in Washington City, at which meeting were present Messrs. French, Walter Lennox, Dean Smith, and myself. I think Shoemaker was present, but I am not certain. I there learned for the first time, Mr. French not having advised with me upon the subject, that he had agreed to sign the contract, and that Mr. Shoemaker would advance him five thousand dollars. Mr. French, on the 6th day of December, signed the contract, and subsequently executed a conveyance of all his interest in said railroad to Shoemaker, to secure the repayment of the five thousand dollars and interest, and held the same for the purposes and objects declared in the contract of the 6th day of December, 1867, which had been signed by him after the signing of the contract on the 6th day of December. On the evening of that day Mr. French expressed himself as gratified that all difficulties had been healed, and that, in consideration of that adjustment, that he thought that the

contract which he had entered into with me by himself and Mr. Lennox, as the attorney of the Alexandria and Washington Railroad Company, was of no *operative*. I told him that this new arrangement (to which I was a party) superceded the contract which I had entered into with him and Mr. Lennox. He then asked (my retaining fee not having been fully paid) whether I would exact the balance. I told that after all the difficulties had been adjusted—the agreement—I considered my contract with himself and Lennox at an end. On the day following Mr. French called upon me, and demanded a surrender of the contract entered into between himself, Mr. Lennox, and me. The original contract was a verbal one; but some time in 1867, owing to the misunderstanding between Mr. French and myself, growing out of the difficulties before alluded to, it was reduced to writing. I refused to surrender the contract to Mr. French. He said as a new arrangement had been made, to which I was a party, he required some evidence that he was released from the contract with me. To gratify him, I told him that whilst I would not deliver him the contract, that I would endorse upon the same that the contract was superceded by the agreement
197 made with Shoemaker of December 6th, 1867. I made the endorsement to this effect, by his request and in his presence, and I herewith produced said contract, with the said endorsement, marked as Exhibit G. W. B., No. One, as a part of my deposition.

2d question. Examine copy of agreement, dated December 6th, 1867, referred to in the testimony of R. T. Merrick, and filed in the cause, and state whether 'tis a true copy of the agreement referred to.

Answer. I believe it to be substantially a correct copy of the agreement, reduced to writing in the office of Mr. Merrick, except the date and the insertion of twenty per cent., and the signatures of Samuel M. Shoemaker, James S. French, and W. Jackson Phelps; also the attestation of R. Fraser and John Stone. I do not know when Shoemaker and Phelps signed the same, nor when the said attestation was made. The date was filled up, the twenty per centum, and the signatures of the said French, the 6th day December, 1867, in the office of the Adams Express Company, above referred to. The original of this copy was made by Mr. Merrick, as already alluded to, in the latter part of December, 1866. I do not recollect whether Shoemaker had signed the contract or not when I presented the same to Mr. French, in Richmond.

3d question. Who had possession of this agreement from the time you presented it to French, in Richmond, until he signed it? Was it held by any party to it binding or of any force until he signed it? Were any threats or any unfair means used to coerce or induce him to sign it, or did he do it with full knowledge of its contents and freely of his own will?

Answer. The agreement was a part of the time in my possession, prior to the signature of Mr. French. I returned it to Mr. Stevens; but by whom it was held after that, and prior to its signature by Mr. French, I do not know. It was not regarded as binding and of
198 any force until signed by him. I so advised Mr. French, and also Mr. Dean Smith, when he asked me as to the legal effect of the verbal agreement entered into at Mr. Merrick's house, between Mr. French and the parties above referred to, in answer to interrogatory No. 1. I am not aware that any force, nor do I believe that any force, threats, or unfair means were used to induce or coerce Mr. French to sign said agreement. He had one year to consider the same, and was fully advised of its legal import before signing the same. During the

year prior to its execution, Mr. French stated that certain advances were to be made; he never mentioned the amount. In my interviews with Mr. Lennox he stated to me that in his interview with Mr. Shoemaker that Mr. French might want twenty thousand dollars, and he (Mr. Lennox) ten thousand dollars; but Mr. French signed the agreement of the 6th December, 1867, he received five thousand dollars from Shoemaker. Mr. Lennox remarked to me that he regarded that as a settlement of any demands by Mr. French on account of advancements.

4th question. Were you present at a conference at the room of Mr. Lennox, in Washington? If yea, who called that meeting, and what was its purpose? State who were present, and took part in the proceedings.

Answer. I was present at a conference at the room of Mr. Lennox, of Washington City. My recollection is that it took place in September, 1868. There were present at that meeting Messrs. French, Lennox, Merrick, Dean Smith, Stevens, H. O. Claughton, attorney for Mr. French, and myself. Mr. Lennox called the meeting, but did so at the request of the parties who signed the contract of December, 1867. The purpose of this meeting was to carry into effect the contract of 1867, the circuit court of Alexandria County having decided that the Alexandria and Washington Railroad Company was an existing legal corporation; also for the purpose of ascertaining what were the views and pretensions of Mr. French in regard to the Hay judgments before referred to. Mr. French said nothing at the meeting; Mr. Claughton, his attorney, spoke for him. Mr. Lennox stated to the meeting the history of the negotiations concerning the contract which had been entered into. He stated that in his interviews with Mr. Shoemaker he had communicated to him the wants and necessities of Mr. French and himself; that Mr. French might need twenty thousand dollars, and Lennox ten thousand dollars. I did not understand Mr. Lennox as claiming that those amounts should be advanced by virtue of any contract. Mr. Claughton, speaking in behalf of Mr. French, especially urged that the contract of December, 1867, had not been carried into effect in this particular; that the judgments in favor of Hay, and claimed to have been assigned to one Mr. French, had not been paid by Mr. Shoemaker. These judgments, as to their binding effects upon the road, were contested by all parties except Mr. French; and Mr. French was informed that if they were valid and binding judgments against the road, that Shoemaker, under the contract, would be bound to pay them. I did not understand at the said meeting that Dean Smith or O. A. Stevens assented to the recognition of these judgments, or of the demand made by Mr. French for their payment or the advancement of twenty thousand dollars, but, on the contrary, they disclaimed all such demands. The meeting here closed.

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5th question. Did Lennox complain of French because he delayed execution of said contract after he had executed; and what did he say?

At a quarter to two o'clock, a recess to a quarter of three o'clock; at which latter hour the parties before mentioned assembled.

FRANCIS L. SMITH, JR.,
Examiner.

The witness, George W. Brent, filed with his answer to the 4th interrogatory a letter from Walter Lennox, calling the meeting of September 19th, 1868, herewith, which is marked G. W. B., No. 2.

Answer to question No. 5. Mr. Lennox, in several communications prior to the signing of the contract of December 6th, 1867, re-
200 gretted that Mr. French had not signed the contract. After its signing he regretted that Mr. French did not manifest a disposition to act harmoniously with the parties thereto.

6th question. Was French persuaded or induced by O. A. Stevens, or any one else, to remove his family to Alexandria in consequence of making of said contract? State what you know of his removal and his reasons.

Answer to question No. 6. I do not know that O. A. Stevens, or any one else, persuaded Mr. French to remove his family to Alexandria in consequence of said contract, prior to the signing of said contract by Mr. French. Mr. French expressed to me to urge forward a suit brought in the name of his brother, Robert S. French, for the recovery of his house and lot in the city of Alexandria, belonging to his wife and children, stating that as soon as recovered he desired to remove with his family to Alexandria.

7th question. State fully how and in what way the seal of the Alexandria and Washington Railroad Company came into your possession, why you retained the same, and what disposition you made of it.

Answer to 7th question. After being retained as counsel for Messrs. French and others, Mr. French placed in my hands the seal of the Alexandria and Washington Railroad Company, with a package of papers concerning his individual interest. The package was delivered to him at his request in 1868. Mr. French demanded of me the seal of said company, which demand was made, I think, in August, 1868. Knowing that Mr. French was acting in hostility to the parties to the contract of the 6th December, 1867, I refused to deliver it to him. After this demand and refusal I saw Mr. Lennox, and told him what I had done. He approved of my action, and I herewith annex, as a part of my deposition, a letter, dated September 23d, 1868, written by Mr. Lennox to Mr. French, setting forth how I became possessed
201 of said seal, and refusing to unite with Mr. French in demanding it from me. (Letter is presented marked Exhibit No. 3, G. W. B.) I also exhibit a formal notice in writing from the said French, in October, 1869, herewith produced as exhibit marked G. W. B., No. 4, after he had made the previous verbal demand upon me for the seal. The reasons for my retention of the seal are clearly and distinctly set forth in Exhibit No. 3, as furnished by Mr. Lennox in his letter to Mr. French, after the meeting of the parties interested in the contract of December, '67, who met, in pursuance of the said contract, on the 29th day of October, 1868, for the purpose of organizing the Alexandria and Washington Railroad Company. In pursuance of a resolution of that company so reorganized, I delivered the said seal to Samuel M. Shoemaker, who was at that time elected president of said company. Mr. Lennox was present at said meeting, and participated in the proceedings thereof, and voted on his stock, to which he was entitled as prescribed by the contract of December 6th, 1867. This meeting was duly called by Mr. Lennox, as the old secretary of said company, by publication in the newspapers. Of this meeting Mr. French was notified by letter to him, of the date of the 28th October, 1868, a copy of which as marked as Exhibit G. W. B., No. 5, as herewith exhibited. I also exhibit a letter from Walter Lennox, marked as Exhibit G. W. B., No. 6, calling for a meeting of the parties to the said contract, to be held on the 26th day of September, 1868, for the purpose of organizing the company contemplated by the said contract, and at said meeting the

notice above referred to was directed to be published. I herewith present, as Exhibit G. W. B., No. 7, the proceedings of said meeting. I present also the notice calling the said meeting of the stockholders of said company, held on the 29th day of October, 1868, marked as Exhibit G. W. B., No. 8.

8th question. Was Mr. Lennox advised of the institution of this suit, and did he approve of its institution? Was Mr. French aware of its institution of the suit, and when did he become aware of it?

Answer to 8th question. Mr. Lennox knew of the institution of this suit on the 29th day of October, 1868. Mr. Lennox and the parties
202 to the contract of December, 1867, except Mr. French, were all in the office of Mr. Brent and Wattles. About five minutes before twelve o'clock the sheriff of Alexandria came in and served what purported to be an injunction to restrain the meeting of the stockholders of the Alexandria and Washington Railroad Company, at the instance of Mr. French. I advised the parties present that the order endorsed upon the writ by the clerk of the circuit court was invalid, and also advised them, and especially Mr. Lennox, that if any such order had really been awarded by the judge of the circuit court of Alexandria County, would be in direct contravention of an order by Judge Underwood on the day previous in this suit. Mr. Lennox was fully advised of this suit. The meeting of the stockholders was held on the 29th of October, 1868, in which Mr. Shoemaker was elected president, and Mr. Lennox a director. He participated and voted in said meeting, as before stated. My impression is that the notice for the injunction of this suit was served on Mr. French, I think, the 28th October, 1868. It may have been the 27th, but the papers in this cause will show for themselves.

9th question. After the agreement was reduced to writing, as described in your testimony, and prior to its being signed by French, did he attempt to enter into negotiations for a compromise of the affairs of the Alexandria and Washington Railroad Company with other parties?

Answer to 9th question. After the arrangement made at the house of Mr. Merrick, and after Mr. French refused to sign the contract referred to, he entered into a correspondence with D. Randolph Martin and Horatio G. Riddle, having for its object a compromise, an adjustment of his interest in the Alexandria and Washington Railroad Company. The purport and exact terms of that correspondence I am not advised of.

10th question. Do you know whether French, after the meeting at Merrick's, endeavored to make some arrangements by which the
203 suit of the Alexandria and Washington Railroad Company was to be postponed after the lesser suit in the circuit court?

Answer to 10th question. During the November term of the circuit court, 1866, James Davidson, claiming to be a stockholder in the Washington, Alexandria, and Georgetown Railroad Company, had applied to the judge of said court for an injunction to enjoin Stevens and Phelps from operating the said road, and to vacate their lease. The suit of the Alexandria and Washington Railroad Company against the Washington, Alexandria, and Georgetown Railroad Company was set for hearing at that term. Davison was anxious to have his motion for an injunction heard first. Mr. French was offered two or three hundred dollars by Davison and Joseph Thornton, Davison's cousin, to postpone his case to Davison's motion. I urged him not to accept it, and to receive no such propositions. Whether this took place before or after the interview at the office of Mr. Merrick, I do not remember. It occurred during the November term, 1866.

11th question. Did you demand of French the repayment of the $5,000 advanced by Shoemaker to him? If yea, state what was done in consequence of that demand. State fully all that occurred.

Answer to 11th question. I had served upon him a demand for said payment. The answers of Messrs. Claughton and Taylor to the interrogatories filed to them in this cause, in regard to the tender, are substantially correct. The receipt for the principal and interest which they tendered, which I offered to give them, is herewith produced, marked G. W. B., Exhibit No. 9, which they refused to accept, and thereupon they refused to pay the money.

Cross-examined by H. O. Claughton, counsel for James S. French.

1st question. You state, in your examination-in-chief that you advised the parties who participated in the reorganization of the Alexan-
204 dria, and Washington Railroad Company that the endorsement on the subpœna in the suit of French, in the circuit court of Alexandria, was not a valid order. State whether or not it was not the form invariably used by the clerk of that court in injunction suits.

Answer to 1st question. I do not know whether it was the common form used by the clerk of said court; it was not the form set forth in precedents, and I think it was regarded insufficient by the judge of said court, who refused to find an attachment upon a rule issued against me, at the instance of said French, for a violation of said order.

2d question. Have you not known, in your practice, that form to be used in injunctions issued from that office?

Answer to 2d question. I do not think I know of any. I have, in the course of my practice, directed an endorsement of that sort to be placed by the clerk upon the writs, so as to give notice to the parties of the object of the suit, and then record the same on the land records, so as to create a lis pendens. The clerk may have issued writs with such endorsements, but I have never regarded them as valid, except as a mere notice of the object of the suit.

3d question. Have you not, in your practice, appeared as counsel for parties under a rule for contempt, in failing to obey an injunction, the endorsement of which was the same as in this case, without objection to the form of endorsement?

Answer to 3d question. I may have, but cannot call to recollection any such case; if any such case occurred, in which I was counsel, it might not have been necessary to have raised any objection upon it.

4th question. Were you not aware of the fact that French was en-
gaged in preparing, or intended to present a bill asking for an in-
205 junction to restrain the meeting called for the election of officers of the Alexandria and Washington Railroad Company, when the petition for hearing an application for an injunction in this case was made?

Answer to 4th question. I was not. I thought, however, it was probable that he might apply for an injunction.

5th question. When the application was made to Judge Underwood for an order on French for hearing the prayer for injunction in this case, was not the day fixed for that hearing purposely postponed till after the day of the meeting which French enjoined?

Answer to 5th question. No; the day was fixed by Judge Underwood himself, in order to give the parties ample notice.

6th question. State the time when you were employed by French and Lennox to bring suit for the recovery of the Alexandria and Washington Railroad.

Answer to the 6th question. In December, 1865, I was retained by Messrs. French and Lennox to prosecute their suit. At that time it was a verbal retainer. The agreement between us was afterwards reduced to writings, in consequence of some misunderstanding between Mr. French and myself, as referred to in my examination-in-chief.

7th question. When was the contract reduced to writing?

Answer to 7th question. The 16th day of February, 1867.

8th question. Were any other powers conferred on you than those of any ordinary attorney?

206 Answer to 8th question. None.

9th question. How long after your employment by French and Lennox was it before agreement B was made?

Answer to 9th question. If agreement "B" refers to the contract bearing date the 6th day of December, 1867, I think that Mr. French went to Washington, as I have stated in my examination-in-chief, in November, 1866, during the term of the circuit court. He informed me at that time of the agreement he had made with Shoemaker. It was not then reduced to writing. In the latter part of December, 1866. I think it may have been early in January. It was reduced to writing at the office of R. T. Merrick, in Washington City, at the request of Walter Lennox. It was not signed by Mr. French until December, 1867.

10th question. Did French and Lennox then appoint you trustee and agent of the Alexandria and Washington Railroad Company, and put into your hands the seal and record books of said company, to hold as such trustee or agent?

Answer to 10th question. They employed me only as attorney, not as trustee and agent. Mr. French placed in my hands the seal of the company, with a package of private papers. I have no recollection of any record book of said company being placed into my hand. A blank book was left with me, in which the proceedings of the company were to be recorded. Mr. Lennox took the book to record certain proceedings therein as secretary, and I have never seen it since.

11th question. What was French's condition as to means when he attended the meeting in Washington, when the verbal agreement was made? Did not the hope of raising means induce French to attend such meeting?

207 Answer. At that time, Mr. French's means, as far as I knew, were exceedingly straightened. I have no doubt that the hope of realizing some immediate benefit induced him to attend said meeting.

12th question. Think over the circumstances stated to you by French on his return from Washington, the day the verbal agreement was made, and say if he did not tell you that Shoemaker had agreed to make him and Lennox certain advances on their interests in the road.

Answer. On the return of Mr. French from Washington, on the day mentioned, he appeared to be in excellent humor, and said he had made a good agreement. He stated that Shoemaker would, no doubt, advance money upon the stock of the parties who were interested. He did not state any amount that was to be advanced, either to himself or Lennox.

13th question. State what you believe the agreement to be, and what interests were secured to French and Lennox under it.

13th question. I believe, from the communications made by Mr. French and Mr. Lennox, and the other parties to the agreement, that the Alexandria and Washington Railroad was involved for large liabilities, amounting apparently to one hundred and ninety-five thousand dollars,

and in the event of a successful recovery in said suit, there would be great difficulty in French and Lennox paying off the incumbrances upon the road. It was deemed highly desirable that some one of capital should intervene and discharge the same or compromise them. French and Lennox were unable to meet those claims, and they deemed it important to secure the aid of some one who would protect the road against foreclosure and sale, in the event of their recovery of it. I advised Messrs. French and Lennox, that there was no doubt as
208 to their title to the road south of the Potomac River. As to their title to the road on the north bank of the Potomac River, I had great doubts. In view of all these difficulties, I advised Mr. French to execute the agreement, which I understood he had made with Mr. Shoemaker at the house of Mr. Merrick. This advice was based upon my knowledge that Messrs French and Lennox were in straitened circumstances, and unable to pay off the encumbrances on said road, in the event of their success of the suit to establish their title then pending in the circuit court of Alexandria, and they needed the assistance of some party of means to aid them in carrying on their litigation. The interest which I deemed secure under said agreement were to prevent any sale of the said road under its incumbrances, and also to protect the interests of Mr. French in the benefit which he claimed under the judgments assigned for the benefit of Hay, of which he claimed to be the beneficiary, and also that the suit would be prosecuted, without trouble or expense to him, by parties of competent means.

14th question. At the time the agreement was reduced to writing at Merrick's office, what obligations did you believe Shoemaker incurred under the agreement?

Answer. He became liable for all the valid liens, whether by deeds of trusts, judgments, or otherwise, resting upon said road. I regarded that the parties to the contract would furnish the means to carry on the litigation, with which, as far as I know, they have complied.

15th question. Was Mr. Shoemaker bound to furnish the means? If not, name the parties who were to furnish the means to carry on the litigation.

Answer. I understood that Mr. Shoemaker would be the party to furnish the necessary means to conduct said litigation.

209 16th question. What means have been furnished to carry on the litigation to establish the title of the Alexandria and Washington Railroad Company, and by whom and when, and please state the amounts?

Answer. The expenses of the litigation in the suit of the Alexandria and Washington Railroad Company have been paid, as far as I know, in pursuance of the contract aforesaid, by Mr. Shoemaker, except the costs of printing the record in the appeal of the Washington and Alexandria and Georgetown Railroad Company against the Alexandria and Washington Railroad Company, in the circuit court of appeals at Fredericksburg. These costs the Alexandria and Washington Railroad Company were under no obligation to pay; but Mr. French, as I believe, voluntarily paid the same. I do not know what amount has been paid by Mr. Shoemaker, or the other parties to the contract, for conducting said suit.

17th question. State, if you can, any amount which has been paid by Shoemaker in establishing the title of the Alexandria and Washington Railroad Company.

Answer. I cannot.

18th question. If Mr. French had not paid for printing the record in

the district court of appeals, would not the case have gone over to another term?

Answer. I think it would.

19th question. Was not French sued by W. C. Yeaton, and compelled to pay his (Yeaton's) fees in the case of the Alexandria and Washington Railroad Company vs. Washington, Alexandria, and Georgetown Railroad Company?

210 Answer. I do not know whether Mr. French was sued and compelled to pay said fees referred to in the question. From information derived from others, I believe Mr. French paid Mr. Yeaton his fees.

20th question I understand you to say Shoemaker was bound to pay the valid debts of the Alexandria and Washington Railroad Company. Do you know what are the claims of French against the Alexandria and Washington Railroad Company? If so, please state them.

Answer. I regarded Mr. Shoemaker as being bound to pay the valid debts of the Alexandria and Washington Railroad Company. I do not know all the claims binding upon said road. The city of Washington claimed $60,000; Fowle, Snowden & Co., an amount that I do not recollect; Benjamin Thornton claimed $30,000. There were some judgments against the road in favor of parties whose names I do not now recollect. There were several other judgments, of which Alexander Hay claimed to be the beneficiary, and which Mr. French claimed to be the beneficiary thereof, by virtue of an assignment to him by Alexander Hay. The judgments amounted, in the aggregate, to about $40,000. Mr. French asserted his demand for these against Hay, the assignor. I advised him that, as Hay had sold, as I believed fraudulently and improperly, the railroad, that the railroad company could hold Mr. Hay responsible for the amounts of those judgments growing out of his receipts for the fraudulent sale of the road; but that he (French) individually, had no claim against Hay, or against said road, for the amount of said judgments. These judgments, of which Alexander Hay claimed to be the beneficiary, were obtained by the creditors of the Alexandria and Washington Railroad Company some time prior to the year 1861. Most of them had been settled by Alexander Hay, at about twenty-five cents in the dollar. He transferred the benefit of said judgments to Mr. French on his payment to said Hay of $5,000. Mr. French never paid Mr. Hay the $5,000, and I advised him that he had no claim

211 against either Hay or against said railroad for said judgments. Mr. French, feeling fully satisfied that he had a good claim against Mr. Hay for the amount of said judgments, wrote to Mr. Bullitt, of Philadelphia, attorney at law, to assert these claims against Mr. Hay, being a resident of Pennsylvania. I know nothing of the results of this correspondence with Mr. Bullitt, but I am since informed that Mr. French has sued Mr. Hay for said judgments in the supreme court of the district of Columbia.

21st question. Do you regard a judgment against the Alexandria and Washington Railroad Company standing unsatisfied as a valid debt?

Answer to 21st question. If there be a valid judgment against the A. & W. R. R. Co. unsatisfied, the said company is bound for it.

22nd question. Do you know that besides the judgments you refer to that there is a judgment assigned to French absolutely, and long before the judgments referred to by you were bought by him standing against the A. & W. R. R. Co. still unsatisfied, and amounting with interest to some thirty thousand dollars?

Answer to 22nd question. I do not.

23d question. Do you regard debts provided for in a deed of trust and uncontested for ten years a valid debt?

Answer to 23d question. This is a legal proposition which I cannot answer unless I have the deed before me, and all the facts connected therewith.

24th question. Look at Commissioner W. C. Yeaton's report in the case of the A. & W. R. R. Co. vs. W. A. & G. R. R. Co., here
212 tendered, and say whether or no the commissioner does not report among the debts secured in a deed of trust to W. Lennox, dated November 7th, 1857, $5,775 00 as paid by and assigned to French, amounting with interest to some $9 or $10,000?

Answer to 24th question. I cannot examine the commissioner's report without time; the report presented to me will speak for itself.

25th question. Do not the facts stated appear in the report?

Answer to the 25th question. The report speaks for itself.

26th question. Did French, after he had signed the agreement, refuse to execute it, but, on the contrary, did he not urge its execution; was it not to his interest to have it executed?

Answer to 26th question. After Mr. French signed the agreement of the 6th day of December, 1867, it was his interest to have it executed as early as it was practicable. Mr. French claimed that by virtue of said contract he was entitled to the benefit of what was called the Hay judgments. His claim was denied. Prior to the signing of said agreement by him, I told him that in my opinion he was not entitled to any benefit of these judgments. He was informed that these judgments were binding on the road, and he entitled to the benefit; he could assert his claim and the road be bound therefor, if they were decided to be valid liens. Mr. French further claimed that the contract of December, 1867, had not been carried into effect, because he had not been paid the Hay judgments, and that the item in the agreement providing for the distribution of twenty per centum of the nett earnings of the road was not carried into effect; he claimed that the decree of the circuit court of November term, 1866, had adjudicated the title of said road in favor of the A. & W. R. R. Co.; this was denied by Shoemaker, Stevens, & Smith. I informed Mr. French that there had been no such adjudication of the title of the road as contemplated by the contract of Decem-
213 ber, 1867; the decree of the circuit court of Alexandria County adjudicating the title of the said railroad company was finally announced at the August term, 1868. Mr. French's objections were all made prior to that time, and his indisposition to abide by the contract of December, 1867, had been manifested prior to August term; he complained to me prior to that term, that the contract of December, 1867, had not been executed because the Hay judgments were not paid to him; because the twenty per centum, provided for in the contract, was not distributed. He was, as before stated, informed that he was not recognized as entitled to the Hay judgments, but, if settled in his favor by any legal proceedings which might be binding upon the road *and* would be paid. In regard to the distribution of the twenty per centum, was told that there had been no decree of the circuit court of Alexandria County establishing the title of the A. & W. R. R. Co. As before stated, the title of said company was only established at the August term of said court, 1868. As soon as this decree was rendered, all the parties to the contract sought to carry it into effect, except Mr. French. Mr. French persistently refused to recognize said contract, and endeavored by suits and injunctions to prevent its execution. Mr. French only complained of the non-execution of the contract for the two grounds already referred

to; he did not complain that said contract was obtained from him by force or threats, but merely, that it had not been executed; and I herewith file a letter from said French, marked as Exhibit F. W. B., No. 10, asking my opinion as to whether the contract had not been violated, to which I replied that it had not been.

27th question. Does the contract of 1867 say it is not to be executed until after final decree was rendered?

Answer to 27th question. The contract of 1867 speaks for itself; my opinion was that the contract contemplated a final decree adjudicating the title of the road, and so advised Mr. French.

28th question. Are the words "final decree" to be found in the contract?

214 Answer to 28th question. The word "final" is not used in the said contract. I refer, however, to the fourth item in said contract as indicating the intent of the parties to the same.

29th question. You have stated French was without means; he had been made to pay the expenses in establishing the title of the A. & W. R. R. Co.; did the contract contemplate his suing the parties in a friendly suit to establish his rights?

Answer. I have not said that Mr. French was made to pay the expenses in establishing the title to the A. & W. R. R. Co.; Mr. French, as I am informed, paid Mr. Yeaton's bill as commissioner; when, I do not know. He paid voluntarily the costs of printing the record in the appeal of the W. & G. Railroad Co., in the district court at Fredericksburg. All this time Mr. French was acting and conducting himself in direct hostility to the contract of 1867, and made no effort to act in unity and harmony with the parties thereto. The contract of December, 1867, makes no provision for a friendly suit, but when Mr. French refused to execute said agreement, asserting his claim to the Hay judgments, he was informed that a friendly suit might be brought to establish his right thereto, if any he had.

30th question. State what interest Stevens & Phelps have in the A. & W. R. R., and what consideration they paid for the same, or were to pay.

Answer. The only interest which Stevens & Phelps have in the A. & W. Railroad is what is specified in the contract of December 6th, 1867, less the interest which R. T. Merrick has in the shares agreed to be allotted to them. I know of no consideration paid by them save what is indicated in said contract.

215 31st question. Does not the contract say they were to assign their lease to the parties under said contracts in consideration of the stock agreed to be assigned them?

Answer. I refer to the contract as furnishing the best answer to this question.

32nd question. When the meeting was held at the Mansion House, Shoemaker elected president of the A. & W. R. R. Co., and the company organized as you have stated, had Stevens and Phelps any lease to assign?

Answer. At that time the circuit court for Alexandria County had, in a suit by Davison against the W. A. & G. Railroad Co., and Stevens & Phelps, *had* declared upon the records and proofs before it, *that* upon a final hearing, that the lease ought to be declared null and void; this decree was made early in January, 1867. Mr. French took an interest in this suit, and expressed surprise and disappointment at this decree. I herewith produce a letter from James S. French, marked as Exhibit G. W. B., No. 11, as a part of my answer; with a full knowledge of this

decree and all the facts and circumstances connected with said case, he executed the contract of December the 6th, 1867.

33d question. Was not the lease also vacated by the supreme court in the District of Columbia?

The decree of the circuit court of Alexandria was affirmed by the court of appeals of Virginia in 1868. There was an order of the court in the District of Columbia, appointing receiver for that portion of the road within the District; not having the decree before me, I cannot state its effect.

34th question. Had any of the parties to the contract, before the meeting at the Mansion House, derived any benefit from the lease, and if so, name who they were.

216 Answer. I know no parties to the contract who derived any benefit from the said lease prior to the meeting held at the Mansion House. By virtue of said contract, Mr. French has received five thousand dollars and Mr. Lennox, I am informed, but do not know, about three thousand.

35th question. If the lease had been vacated when the company was organized at the Mansion House, how could Stevens & Phelps give any consideration for the stock assigned them?

Answer. I know of none except what is indicated by the contract.

36th question. State who called the meeting at the Mansion House, and whether or not it was advertised thirty days, as the usual statute law requires.

Answer. It was called by Walter Lennox as secretary of the company. I think thirty days' notice was given. My impression is, that it was published in the State Journal.

37th question. Was not the State Journal, in which the notice was published, discontinued and removed to Richmond before the meeting took place?

Answer. I really don't know.

38th question. Was Walter Lennox a stockholder in the A. & W. R. R. when he called the meeting, or is he now a stockholder?

Answer. He was, and still is.

217 39th question. Does not Shoemaker in his bill in this case assert that he purchased Lennox's entire interest in the A. & W. R. R., and makes an exhibit of the conveyance from Lennox assigning it to him?

Answer. Not having the bill before me, I cannot answer as to its allegations. The bill and its exhibits will show. I know that Mr. Lennox made a conveyance of his interest in said railroad to Shoemaker; although the conveyance may be absolute upon its face, yet it was intended and so regarded by Shoemaker as a security for monies lent by said Shoemaker to Lennox.

40th question. Do you know that the conveyance was not an absolute one?

Answer. I have already stated that although the conveyance may be absolute upon its face, yet it was regarded as a mere security for money lent; at the meeting at the Mansion House, Mr. Lennox voted on his stock for Shoemaker, as president of the A. & W. Railroad Company. Shoemaker, at said meeting, claimed that said conveyance was a mere security for money lent to Lennox.

The further taking of these depositions is adjourned until to-morrow, the 9th day of December, at 10 o'clock, at the same place.

FRANCIS L. SMITH, JR., *Examiner.*

OFFICE OF FRANCIS L. SMITH, JR.,
Alexandria, Virginia, December 9th, 1869.

Present: George W. Brent, O. A. Stevens, and Jas. S. French.

41st question. In your answer to the 16th question, you have stated that French voluntarily paid the costs in the appeal case of the Washington, Alexandria & Georgetown Railroad Company against
218 the Alexandria & Washington Railroad Co., in the circuit court at Fredericksburg; did not the practice adopted by that court, if not the law, require that all the costs, both of the appellant and appellee, should be paid before a case could he heard; and, in the case referred to, was not French compelled to pay all the costs in order to have the case tried; and what was the amount so paid by him?

Answer. The law of Virginia directs that no case shall be heard on appeal until the costs of printing the record shall be paid. Neither the practice nor the law requires that the costs of appellant and appellee should be first paid. Mr. French was not compelled to pay the costs of printing the record; if the appellants had not paid the costs in a reasonable time, the court would have dismissed the appeal.

42nd question. If French had not paid the costs, would not the case have been continued to the next term?

Answer to 42nd question. I think it is probable that it would.

43d question. State whether or no you were counsel for Stevens & Phelps, lessees, in the suit brought by Joseph Davison to vacate the lease; if so, state what compensation you have received from them or from S. M. Shoemaker or Dean Smith, for services rendered in connection with said lease?

Answer to 43d question. I was retained by Messrs. Stevens and Phelps as their counsel, in the suit of Davison against Stephens & Phelps; before accepting their retainer, apprehensive there might be some antagonism of interests between the interests of Messrs. French and others and Stevens and Phelps, I consulted Mr. Lennox on the subject, who agreed and advised my accepting the retainer. Mr. French was not here; on his coming to Alexandria in November, 1866, he approved the same, but afterwards, when the difficulties between
219 Shoemaker and himself occurred, he complained of my acting as counsel for Messrs. Stevens & Phelps; in this connection I refer to the letter of Mr. French, filed as an Exhibit in this cause, marked G. W. B., No. 11.

44th question. Could the lease have been sustained without destroying the title of the Alexandria & Washington R. R. Co. and setting up the title of the Washington, Alexandria & Georgetown R. R. Co?

Answer to 44th question. It could; as between the Washington, Alexandria, and Georgetown R. R. Co. and the said lessees of the title of the Alexandria & Washington R. R. Co. was established, the lease of the road between Alexandria and the south bank of the Potomac would have been destroyed.

45th question. State what is the date of French's letter, which you refer to?

Answer to 45th question. January 15th, 1867.

46th question. Has not French always contended that the title of the Alexandria and Washington R. R. Co. to their road in Washington City, was a valid one, and has he not brought suit to establish it?

Answer to 46th question. Mr. French has, earnestly and persistently; I have been informed and believe, that Mr. French has recently insti-

tuted a suit in the District of Columbia, to establish the title of the Alexandria & Washington R. R. Co. And farther this deponent saith not.

GEORGE W'M BRENT.

IN CLERK'S OFFICE, U. S. CIRCUIT COURT, DIST. VIRGINIA,
Richmond, March 7, 1870.

A true copy of depositions filed in suit of French vs. Shoemaker, depending in this court.

Teste: W. H. BARRY, *Clerk.*

220 41.—*Exhibit with Brent's dep'n.*

This agreement entered into this 16th day of February, 1867, between James S. French and Walter Lenox of the one part, and George W. Brent of the other part, witnesseth, that the said George W. Brent hereby agrees to act as counsel for and attend to all cases now pending, or which may hereafter be brought either in the State or Federal courts, involving the title or affecting the interests of the Alexandria & Washington Railroad Company, and to act as counsel in all such cases, until litigation as to the title shall cease, and the said company be restored to its rights and privileges, and as compe'sation for such services so rendered the said French & Lenox hereby agree and bind themselves to pay the said George W. Brent the sum of five hundred dollars cash, the receipt of three hundred dollars, part thereof, is hereby acknowledged by the said Brent, and the further sum to be hereafter paid him of ten per cent. on the net value of the property recovered, & meaning by this the value of the property after the payment of all liabilities against it, said percentage to be paid in the stock of the said railroad company.

In witness whereof we have hereto set our hands & seals this day and date above written.

JAMES S. FRENCH. [SEAL.]
WALTER LENOX. [SEAL.]
GEORGE W. BRENT. [SEAL.]

[Int. rev. 5 cents cancelled.]

221 (Indorsements.)

This agreement has been superseded by another, entered into between Jas. S. French, W. Lenox, S. M. Shoemaker, J. D. Smith, O. A. Stevens & Phelps & George W. Brent, the 6th of Dec'r, 1867.

BRENT & WALLER.

DEC. 7, '67.

Agreement. Feb. 16, '67. French & Lenox with Brent as counsel. G. W. B. No. 1.

This is the paper referred to in Col. Brent's deposition as Exhibit G. W. B. No. 1, and produced by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

222 42.—*Exhibit with Brent's dep'n.*

WASHINGTON, *Sep.* 17, 1868.

GEORGE W. BRENT, Esq.

SIR: You are respectfully requested to attend a meeting, to be held at the office of Walter Lenox, esq., No. 4 Louisiana ave., Washington, D. C., on Saturday, the 19th inst., at 12 m., the purpose of said meeting having reference to a certain agreement between James S. French, Walter Lenox, Oscar A. Stevens, Phelps, S. M. Shoemaker, I. Dean Smith, George W. Brent, & Richard T. Merricks, concerning the Alexandria & Washington R. R. Co., and the interest of the respective parties under said agreement.

Respectfully yours, &c.,

W. LENOX.

223 (Indorsed:) G. W. B., No. 2.

This is the paper filed by George W. Brent, and referred to in answer to question No. 4, as G. W. B. No. 2.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

224 43.—*Exhibit with Brent's dep'n.*

WASHINGTON, *Sep.*, 23, 1868.

JAMES S. FRENCH, Esq.

SIR: I cannot comply with your request, that I should unite with you in an application to George W. Brent, att'y at law, that he should surrender to you the seal of the Washington & Alexandria R. R. Co.

Forbearing to enter into any detailed review of all the circumstances suggested by your application, I deem it sufficient to say, that I regard Mr. Brent as the lawful custodian of the seal, until deprived of its possession by due process of law.

He was selected & employed to act as the counsel of the Alex. & Wash. R. R. Co. against the Alex., Wash., & Georgetown Comp., yourself & myself being the exclusive proprietors of the first-named company. Subsequently we associate ourselves with other parties, in the prosecution of the rights & interests of the Alex. & Wash. R. R. Co., under a written contract, and under which Mr. Brent was retained as counsel for the common interests of all parties, and as such has become the custodian of the seal. These interests may conflict, and it is not for me to suggest any course inconsistent with his own judgment and sense of professional propriety.

Very respectfully, &c.,

WALTER LENOX.

225 (Indorsed:) This is the paper referred to in G. W. Brent's deposition as Exhibit G. W. B. No. 3, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1867.

226 44.—*Exhibit with Brent's dep'n.*

G. W. B., No. 4.

Messrs. BRENT & WATTLES and GEO. W. BRENT.

GENTLEMEN: I hereby notify you, that at an adjourned meeting of

the directors of the Alexandria & Washington Railroad Company, held in the city of Alexandria on Friday, the 9th day of October, 1868, on motion it was "resolved that the president of the company, James S. French, demand of George W. Brent or Brent & Wattles, attorneys at law, the seal of the Alexandria & Washington Railroad Company, left with him or them for safe-keeping, by the president of said company."

I now, in accordance with said resolution, demand that you deliver to me the said seal of the Alexandria & Washington Railroad Company.

I further notify you that you are not authorised to act as counsel for the Alexandria & Washington Railroad Company, nor have you been regarded as counsel for said company, certainly not since the 29th of August, 1868, nor was it supposed you considered yourselves counsel for said railroad company.

JAMES S. FRENCH.

227 (Indorsed:) Letter of James S. French. Exhibit G. W. B. No. 4.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 4, and filed by as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

228 45.—*Exhibit with Brent's dep'n.*

ALEXANDRIA, *October* 28, '68.

JAMES S. FRENCH, Esq.

SIR: I have been requested to hand you a copy of the proceedings of the meeting of the stockholders of the Alexandria & Washington R. R. Company.

Another meeting will be held at the Mansion House, in the city of Alexandria, at 12 m., October, the 29th, 1868, when you are requested to attend.

Yours, respectfully,

GEORGE WM. BRENT.

I certify that I delivered a true copy of the annexed paper to James S. French this 28th day of October, 1868.

R. W. FALLS.

229 (Indorsed:) Notice to French. Exhibit G. W. B. No. 5.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B., No. 5, and filed by him as such.

FRANCIS L. SMITH, JR.

8TH DECEMBER, 1869.

230 46.—*Exhibit with Brent's dep'n.*

WASHINGTON, D. C., *September 22nd*, 1868.

To Messrs. James S. French, Oscar A. Stevens, W. J. Phelps, J. Dean Smith, R. T. Merrick, George W. Brent, and S. M. Shoemaker.

GENTLEMEN: The circuit court for Alexandria County having, at its last August term, rendered a decree, deciding that the Alexandria and Washington Railroad Company was entitled to the road, and that the

sale made by J. B. Stewart, on the 10th of April, 1862, was null and void the time has therefore come when, by the stipulations of the contract of the 6th December, 1867, paragraph No. 4, executed by myself, and Messrs. James S. French, S. M. Shoemaker, and others, should be carried into effect. I therefore request you to meet me on the 26th day of September, 1868, at the Adams Express office, Pennsylvania avenue, in the city of Washington, at 12 M., for the purpose of organizing the company contemplated by said contract, and giving full effect to its provisions.

I am, very respectfully, your ob't serv't,

W. LENOX.

G. W. B.

231 (Indorsed:) W. Lenox. Exhibit G. W. B. No. 6.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 6 and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

232 47.—*Exhibit with Brent's dep'n.*

WASHINGTON CITY, *September 26th*, 1868.

Met, in pursuance of the accompanying notice, at the office of the Adams Express Company, in the city of Washington, the herein named parties, Walter Lenox, George W. Brent, Oscar A. Stevens, S. M. Shoemaker, and J. Dean Smith.

"WASHINGTON CITY, *September 22nd*, 1868.

"To Messrs. James S. French, Oscar A. Stevens, W. J. Phelps, J. Dean Smith, R. T. Merrick, George W. Brent, and S. M. Shoemaker.

"GENTLEMEN: The circuit court for Alexandria County having, at its last August term, rendered a decree, deciding that the Alexandria and Washington Railroad Company was entitled to the road, and that the sale made by J. B. Stewart, on the 10th of April, 1862, was null and void, the time has therefore come when, by the stipulations of the contract of the 6th December, 1867, paragraph No. 4, executed by myself and Messrs. James S. French, S. M. Shoemaker, & others, should be carried into effect, I therefore request you to meet me, on the 26th day of September, 1868, at the Adams Express office, Pennsylvania
233 avenue, in the city of Washington, at 12 m., for the purpose of organizing the company contemplated by the said contract, and giving full effect to its provisions.

"I am, very respectfully, your ob't serv't,
(Sig'd) "WALTER LENOX."

Upon motion, George W. Brent was appointed chairman, and Walter Lenox, secretary of said meeting.

The call for the meeting was, by direction of the chairman, read by the secretary, and, upon which, the chairman invited action of the meeting.

Upon motion, it was,

Resolved, That the time has arrived when it is necessary and advisable that the purposes and objects of said call shall be carried into effect by the parties interested therein, and with that view, George W. Brent be authorized and requested to prepare and cause to be published a no-

tice in conformity with the code of the State of Virginia, and the requirements of the contract referred to in said call.

Resolved, That George W. Brent be requested and authorized to retain the possession of the seal of the Alexandria and Washington
234 Railroad Company, until otherwise directed by the parties representing a majority of the interest represented in said railroad.

Resolved, That Oscar A. Stevens and W. J. Phelps be requested to furnish to said meeting a statement of the property and effects belonging to, or claimed to belong to, said Alexandria and Washington Railroad Company, the condition of said road, especially that of the railroad bridge across the Potomac River; also a statement of their written or verbal agreements with J. H. Lathrop, receiver; also the number of their employees under their own appointments, or by agreement with said receiver; and their respective salaries; and further, the property of every kind belonging to the said Stevens and Phelps, as lessees of the Washington, Alexandria, and Georgetown Railroad Company, or in their own right, which may become the property of the Alexandria and Washington Railroad Company by virtue of the agreement herein referred to.

Resolved, That Richard T. Merrick, George W. Brent, and J. Dean Smith, in association with S. M. Shoemaker, be, and they are hereby, authorized to prosecute, protect, and promote the interests of the proposed and agreed upon reorganization of the Alexandria and
235 Washington Railroad Company, touching the claims of said company against the Government of the United States.

Resolved, That the chairman be requested to report to said meeting a plan of organization as contemplated by the contracts, dated 6th December, 1867, between the parties herein named and one James S. French, of the State of Virginia; and also report upon the condition of the property of said road, and all matters of litigation now pending in relation thereto.

Adjourned to meet at the called meeting on the twenty-ninth day of October, 1868.

(Signed) WALTER LENOX,
Secretary.

I certify that I delivered a true copy of the annexed paper to James S. French, this 28th day of October, 1868.

R. W. FALLS.

It is admitted that this notice was served, as certified above, by R. W. Falls.

JAMES S. FRENCH.

236 (Indorsed:) S. M. Shoemaker vs. James S. French. Exhibit G. W. B. No. 7.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 7, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

237 48.—*Exhibit with Brent's dep'n.*

NOTICE.—A general meeting of the stockholders of the Alexandria and Washington Railroad Company will be held on Thursday, the 29th

of October next, at the Mansion House, in the city of Alexandria, Va., at twelve o'clock m.

(Signed) WALTER LENOX,
Secretary.

I certify that I delivered a true copy of the annexed paper to James S. French, this 28th day of October, 1868.

R. W. FALLS.

It is admitted that this notice was served, as above certified, by R. W. Falls.

JAMES S. FRENCH.

238 (Indorsed:) S. M. Shoemaker vs. James S. French. Exhibit G. W. B. No. 8.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 8, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

239 49.—*Exhibit with Brent's dep'n.*

Rec'd of James S. French, esq., five thousand two hundred and fifty dollars in full of the debt and interest secured by the within assignment, and, in consideration thereof, I hereby assign, transfer, and set over unto the said James S. French nine hundred and thirty seven and one-half shares of the stock in the Alexandria and Washington Railroad Company, that being his interest therein.

240 (Indorsed:) G. W. B. No. 9.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 9, and filed by him as such,

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

241 50.—*Exhibit with Brent's dep'n.*

ALEXANDRIA, VA., *August the 19th*, 1868.

GEO. W. BRENT, Esq'r.

SIR: The agreement signed by me, December the 6th, 1867, to which Sam'l M. Shoemaker, J. Dean Smith, Oscar A. Stevens, W. Jackson Phelps, Walter Lenox, and yourself are parties, has, in my opinion, been violated, both in its letter and spirit, and, therefore, I do not regard myself as bound by it. I should like to know whether or not you regard it as a subsisting contract.

Please inform me.

Very res., yours, &c.,

JAMES S. FRENCH.

(Indorsed:) Exhibit G. W. B. No. 10. James S. French.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 10, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

242 51.—*Exhibit with Brent's dep'n.*

TAZEWELL C. H., *Jan'y* 15.

DEAR BRENT: We have had the worst weather here known for many years. It has been snowing nearly every day since I got home—weather intensely cold. But for these things, not being able to get about, I should have returned to Alex'dr' probably before this time. As it is, I will come as soon I can. I have seen the delegate from this county in reference to the R. R. bill. He has promised to oppose it. I am a good deal disheartened about the R. R. case—the delay is ruinous. Will Thomas hold a special term? I suppose you were, like myself, greatly surprised at the decision of Wylie & Thomas. Will the lessees appeal? But the strangest of all was the appointment of McKenzie receiver for a road that he had for years labored to destroy, & put to great and unnecessary expense. I learn this from a newspaper. Write on receipt of this, for I may not be able to get away before hearing from you.

Truly, yours,

J. S. F.

243 (Indorsed:) J. S. French. G. W. B. No. 11.

This is the paper referred to in George W. Brent's deposition as Exhibit G. W. B. No. 11, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 8TH, 1869.

244 52.—*Exhibit with Brent's dep'n.*

SHOEMAKER
vs.
FRENCH.

It is agreed in this cause that in satisfaction of the judgment referred to relative to a lot of ground that it was satisfied by Shoemaker, who took a conveyance for the same in his own name, and that the said deed may be filed as a paper in this cause.

It is also agreed that no exception shall be taken to the deposition of Geo. W. Brent, because the commission has failed to certify that he was duly sworn.

It is also agreed that R. T. Merrick's deposition may be signed by him, nemo pro nunc, either in person, or by some one authorized by him to do so.

GEO. W'M BRENT,
For Shoemaker.

F. P. STANTON,
H. O. CLAUGHTON,
J. H. GILMER,
For French.

245 (Indorsed:) Shoemaker vs. French. Agreement of counsel. Dec. 17, '69. Filed Dec. 17, 1869. W. H. Barry, clerk.

246 53.—*Deposition of R. T. Merrick.*

The deposition of George W. Brent and others, taken before me, Francis L. Smith, jr., examiner, (appointed by the circuit court of the United States for the district of Virginia,) pursuant to the notice and authority hereto annexed, at my office, in the city of Alexandria, Virginia, on Monday, the 6th day of December, 1869, between the hours of 10 a. m. and 5 p. m., to be read as evidence in certain suits in equity, depending in the circuit court of the United States for the district of Virginia, wherein Samuel M. Shoemaker is plaintiff and James S. French is defendant, and James S. French is plaintiff and Samuel M. Shoemaker is defendant.

DECEMBER *6th*, 1869.

The execution of the commission in the above-entitled causes was opened at 10 o'clock a. m., and kept open till 5 o'clock p. m. of this day, at my office, in the city of Alexandria, Virginia. No witnesses appearing, the taking of the depositions under this commission is continued till to-morrow, December 7th, at the same place, at the hour of 12 o'clock m.

FRANCIS L. SMITH, JR.,
Examiner.

247 OFFICE OF FRANCIS L. SMITH, JR.,
Alexandria, Virginia, December 7th, 1869.

Present: George W. Brent and J. Dean Smith, counsel for Samuel M. Shoemaker; and Lawrence B. Taylor and H. O. Claughton, counsel for James S. French.

RICHARD T. MERRICK, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

By counsel for S. M. Shoemaker:

1st question. State what knowledge you have of the execution of a contract of the 6th of December, 1867, between James S. French, S. M. Shoemaker, Walter Lennox, George W. Brent, O. A Stevens, and W. J. Phelps, and J. Dean Smith, relative to the Alexandria and Washington Railway; and if any, state fully all the circumstances which led to its execution.

Answer. During the summer or fall of 1866, I think it was, and pending the litigation in the supreme court of the District of Columbia, in regard to the lease which Stevens and Phelps held of the road, Mr. Lennox, on several occasions, spoke to me in regard to the conflicting claims upon the road, deploring the embarrassments that surrounded the property, representing that French and himself were the only parties entitled to it, and expressed an anxious desire that some arrangement might be made in regard thereto. These suggestions from him were very frequent, and I think I uniformly told him that I had nothing to do with such arrangements; that they would have to be made with the parties themselves, as they contemplated a purchase of a portion of his right and French's to the property, a particular in which I had no authority to act for anybody. These various suggestions of his were finally developed into an arrangement for a meeting between himself

and certain parties which he informed had been made, and at which it was expected I was to be present. I think my first information in regard to it was from Mr. Lennox, but in this I may be mistaken,
248 for, as counsel for Messrs. Stevens and Phelps, lessees, I was in frequent communication with them pending the litigation, as also with Mr. Dean Smith, of Baltimore, and Mr. Shoemaker, and in reference to the particular individual by whom remarks in regard to the subject of the road were made, I may be in error; but it is certain that my first knowledge of the project was from Mr. Lennox, and that he pressed it forward with great earnestness and energy, endeavoring strenuously to enlist me in it. I could not take a principal part, or any part, except as an individual adviser, and was too much occupied in my profession to give very serious thought to his plans and suggestions. I consented, however, to be present at the meeting, and I think suggested myself, from a consideration for my own convenience, that it should take place at my own office or house, which were together. It did take place at my house, and was attended by Mr. French, Mr. Lennox, Mr. Stevens, Mr. Shoemaker, Mr. Smith, and myself, and nobody else. It is impossible to detail minutely everything that transpired. The meeting or conference lasted through two or three hours. I think Mr. French and Mr. Lennox fully explained the relation in which they stood to the property in question; their interest and right in corporation known as the Alexandria and Washington Railroad Company; the manner in which it had been attempted to defraud them of such right and interest, and the circumstances under which the corporation known as the Washington and Alexandria and Georgetown Railroad Company had been organized. From the representations made, all the gentlemen present seemed clearly of the opinion that the sale was made, under some order of some court in Alexandria, of the property and franchises of the Alexandria and Washington Railroad Company was illegal and fraudulent, and that probably the corporation organized upon that sale, known as the Washington, Alexandria, and Georgetown Railroad Company would be decreed, at some time or other, never to have been properly created, and never to have had any valid corporate existence. Mr. French explained the nature of a suit he then had pending, and of which, I suppose, we had all heard before that time, involving this very question. The course of that suit and its probable results were very much talked of, and it seemed generally believed that it would
249 end in an adjudication in favor of Mr. French, and declaring the Alexandria and Washington Railroad corporation was still in existence, and entitled to the property then held by the Washington, Alexandria and Georgetown Railroad Company. I told my client, Mr. Stevens, the lessee, that if such should be the judgment of the court, his lease was gone, and I think it was also suggested that it would probably be fatal to some contracts held by Shoemaker, but of this I am not certain. Mr. French also explained, and I think Mr. Lennox also joined with him, various encumbrances upon the property for which the Alexandria and Washington Railroad would, in any event, be responsible; among them, I believe, was a mortgage to the city of Washington, and two or three other judgments; which judgments were, however, represented to be, I think, partially or wholly satisfied in some way or other; I do not think they were wholly satisfied, but their entire burthen, for some reason or other, did not press upon the property. After these discussions, the gentlemen proceeded to make an estimate as the basis for a purchase from Lennox and French, and it was agreed that, estimating the property at some specified sum—I think three hun-

dred thousand dollars—Mr. French and Mr. Lennox were to convey their entire interest to a corporation, to be organized, or the three hundred thousand dollars of stock was to be issued by the old corporation, I forget which, a certain portion to be for French, and a certain other portion for the following persons: Lennox, Shoemaker, Smith, Stevens and Phelps. In consideration of this transfer of part of their interest by French and Lennox, Shoemaker was to lend the organization the means of protecting itself from any pressing encumbrances, and the money, if necessary, with which to operate the road. I think something was also said, at the same time, about raising the money by issuing bonds. This agreement was to go into operation in the event of a decree, in the case I have referred to, adjudging that the corporation known as the Alexandria and Washington Railroad Company still had a valid corporate existence, thereby establishing the title set up by French and Lennox to the property. In the mean time, the specific terms of agreement were to be reduced to writing and signed by the parties. I understood from Mr. French and Mr. Lennox, or, to speak more accurately, from the general conversation in which they participated, that their motive was
250 to make the property as valuable and productive as possible when their title should be decreed to be good. Being without means themselves, in order to make the property available, it was necessary they should obtain the means from others. They also represented, particularly Mr. French, that they were without means in the present, and without any prospect of getting them, otherwise than through this property; and it was suggested that after the agreement should have been made, and the respective rights of those in interest reduced to some definite condition, that Mr. Shoemaker would, upon the hypothecation of the interest of these gentlemen, make a loan or advance, but to what amount I do not know. This, however, formed no part or parcel of the contract, but was altogether a private matter between Shoemaker, and French, and Lennox, which did not enter into the agreement, and in which the other parties to the agreement had no share or part. It is also proper that I should say—having understood that it has been represented by somebody that at that meeting I undertook to argue the case to which I have referred (of Mr. French) pending in Alexandria, and involving the question of his title to the property—that I did not so undertake, and the statement is wholly unfounded; on the contrary, I expressly said that I could not, and would not, argue the case, and that such a position would be inconsistent with professional relations into which I had already entered; that I should appear in the court of Alexandria to argue the case brought by the stockholders of the Washington, Alexandria, and Georgetown Railroad Company against Stevens and Phelps, lessees, as their counsel, to maintain their lease; that French's case, if successful, would destroy the lease; that I could not appear in one case to maintain a lease, and then in another to destroy that very muniment of title; that in the argument I should not damage the French case any, for it would be apparent, as I believed, that if the lease was not good, it was because the corporation had no corporate existence. The question would not necessarily be brought forward in the lease case, and certainly not by me, as counsel for the lessees. I further stated that I should endeavor to maintain that lease, and that I considered, in the view that I took of it, that it would stand as a valid lease until there should be a decree of the court in the French case declaring the lessors, the Washington, Alex-
251 andria, and Georgetown Railroad Company not to be a corporate existence; and when that decree was rendered, our agreement

would go into operation, and my clients be protected, for they would then hold of themselves and the other parties to the agreement.

2d question. Was said agreement substantially reduced to writing; and if so, when and where, and who were present?

Answer. The agreement was, after the meeting referred to in the last answer, reduced to writing. I am unable to fix the date, which, however, I presume can readily be ascertained with certainty. It was reduced to writing at my office, and think, by myself. There were present at the time Mr. Lennox, Mr. Brent, Mr. Smith, and Mr. Stevens. I was requested by these gentlemen, or some of them, to write out the agreement as it had been made at the meeting already referred to. Mr. Shoemaker was not present, if my recollection serves me, but was, I think, represented by Mr. Smith. Mr. French was not present, but was represented by Mr. Lennox, as I understood. I wrote down, as the agreement which had been made, terms and stipulations, which we all concurred were the terms and stipulations after verbal agreement made, and all the terms and stipulations thereof. In saying that Mr. Smith represented Mr. Shoemaker, and that Mr. Lennox represented Mr. French at this meeting, I do not mean to say that they presented any written formal authority to do so, nor to be positive that they stated that they appeared as such representatives; but I so understood them to appear, and Mr. Smith spoke in behalf of Mr. Shoemaker, and Mr. Lennox spoke in behalf of Mr. French, after the agreement was drawn, signed then and there by the parties present, namely, Brent, Lennox, Stevens, and Smith.

3d question by same. Examine copy of agreement filed in this cause December 30th, 1868, dated December 6th, 1867, and state if it is a copy of the contract reduced to writing in your office.

252 Answer. My impression is that it is a copy of that contract. It contains the substantial provisions which, according to my recollection, were contained in the contract which I wrote. I don't think I have seen the original, or a copy of that contract, for over a year. This copy appears to be a copy of a contract bearing the signatures of Shoemaker, French, and Phelps, and witnessed by R. Fraser and John Stone. The contract, when it left my office, did not bear those signatures.

4th question. Were you present at any conference between some of the parties to said contract at the room of Walter Lennox; and if yes, state where it took place and who were present?

Answer. I was present at a conference in regard to this subject at the room of Mr. Walter Lennox, on his invitation. I can't fix the time; it was warm weather. I can't fix the time because I had ceased to take any great deal of interest in many of the transactions connected with this business, owing to the capricious humors and bad faith and bad behaviour of some of the parties. There were present at Mr. Lennox's room, on the occasion referred to, Mr. Lennox, Mr. Stevens, Mr. French, I think Mr. Claughton, Mr. Smith, and myself, and, I think, Mr. Brent. Before answering another question I desire to state, by way of connection or addition to my answer to the interrogatory in regard to the copy of the contract exhibited, that this copy bears date 6th day of December, 1867. I am satisfied, and can't be mistaken about the fact, that the meeting referred to at my office, at which the agreement between the parties, previously made at the meeting at my house, was reduced to writing, took place at a much earlier date, and I am satisfied that that agreement was reduced to writing very shortly after it was made at my house. Though I can't fix the precise date of such writing, it is proba-

ble that, as all the parties did not sign at the time the contract was written, the date was left blank, to be filled up at the time of the signature of the party last signed.

253 5th question. At said conference did Walter Lennox claim that it was agreed at the meeting at your house that Shoemaker should advance French $20,000 and Lennox $10,000, and did Stevens and Smith admit that such was the agreement?

Answer. I cannot detail all that passed at this conference, but my recollection is quite distinct that the claim indicated in the interrogatory was not set up by Mr. Lennox as part of the agreement made at my house and written by Mr. Stevens, or Mr. Smith gave any assent to such a demand. I recollect that, after we had come together, the conversation was opened by Mr. Lennox speaking—I think in behalf of Mr. French—in a very kind, courteous, and considerate manner, claiming that there was some arrangement or understanding between himself and Mr. French and Mr. Shoemaker, of some kind or other, to the effect that something was to be advanced by Shoemaker; but this arrangement or understanding, as I gathered it, and to the best of my recollection, was not claimed to be a part of the agreement at my house. I am certain, however, that, whatever it was, it was denied by Mr. Smith, and there was an issue between Smith and Stevens, on one side, and Mr. Lennox on the other. I may be mistaken as to whether Mr. Lennox put forward the claims as founded upon an agreement made at my house, but my recollection is distinct that, whatever the claim was, it was not assented to.

6th question. Did Mr. French say anything at said conference?

Answer. I don't think Mr. French said anything at all.

7th question. In your interview with Mr. Lennox, did he complain because of Mr. French's delay to execute the agreement?

Answer. After the agreement was reduced to writing, I think several months, probably nearly a year elapsed before I heard that

254 French had signed it. I heard, in the mean time, that he was playing fast and loose about the business, and this is the behavior and conduct to which I referred *to* in a previous answer. During this period I had a great many conversations with Mr. Lennox, and Mr. Lennox said to me, on repeated occasions, that he hoped that I would believe that he had done everything in the matter that he could do, and intended to carry out the agreement, so far as he was concerned, to the fullest extent, as an honorable man, and in some of these conversations denounced Mr. French in very unmeasured terms as acting in bad faith, and using other expressions which is not necessary to repeat. He would also, at times, excuse him upon the ground that he was of eccentric character, and whimsical and capricious, and represented that he believed that French would yet carry out the agreement in good faith.

Cross-examined by L. B. Taylor, counsel for James S. French:

1st question. State when the meeting took place at your house at which a verbal agreement was made.

Answer. If, by a verbal agreement, the question is designed to indicate a verbal agreement referred to in the examination-in-chief, afterwards reduced to writing, the meeting at which it was made took place at my house some time in the fall of 1866, I think, or in December of that year; but I cannot fix the date with positive certainty.

2d question. Did it take place before or after the November term of the circuit court for Alexandria County?

Answer. I do not know when the terms of the circuit court for Alexandria County are held, nor how frequently, but it did take place before I argued the case brought by the stockholders of the Washing-
255 ton, Alexandria, and Georgetown Railroad Company against Stevens and Phelps, in that court, to the best of my recollection.

3d question, How long after this agreement was it before the verbal agreement was reduced by you to writing, and signed by some of the parties?

Answer. I have not said that the agreement referred to was reduced to writing after that agreement. It may have been before, and I am unable to fix the time at which it was so reduced to writing. Either positively or relatively to the event indicated, I can only say that I recollect it was not very long after the verbal agreement was made.

4th question. What interest have you in the agreement made and exhibited in the case marked "B," and known as the Shoemaker contract?

Answer. I have an interest in the stock set off to Stevens and Phelps, a proportion of which is to be passed to me in consideration for professional services.

5th question. How many shares of said stock were to be so passed to you?

Answer. Stevens and Phelps have agreed, upon the consideration indicated, to assign to me one-third of their stock. I think, at a meeting of the stockholders, I have already represented part of that stock.

6th question. Were the professional services to which you refer those rendered in endeavoring to sustain the lease from the Washington, Alexandria, and Georgetown Railroad Company to Stevens and Phelps?

256 Answer. They were so in part, and also for professional services as their counsel generally, and as their counsel in connection with the interest they might have in the Alexandria and Washington Railroad Company; but I do not wish it understood, by any means, that this stock is the only compensation for the services indicated, already demanded and received from them, and to be hereafter demanded, and, I hope, received.

7th question. What was the amount of stock agreed to be assigned Stevens and Phelps, when the verbal agreement was made?

Answer. I have already answered, in my examination-in-chief, that I cannot say, from recollection, what were the respective amounts of stock it was agreed should be issued to the parties severally. I know, however, that the amount claimed by Stevens and Phelps was increased, in order that they might have a sufficient amount to meet the emergency of my employment, but it was not increased for the purpose indicated to the extent of the one-third I have stated they agreed to assign me. I will say further, that it was understood at the meeting that in protecting the interest of Stevens and Phelps in the Alexandria and Washington Railroad Company, when that interest should arise by reason of the agreement, which was to be of effect upon the rendition of a decree affirming the French title, I should protect the rights of all parties in interest.

8th question. Did or did not French and Lennox agree to assign you a specific amount of stock, on certain considerations, when the verbal agreement was made?

Answer. I don't think they did; if they did agree to do so, I am ready to receive it. If the question refers to any private agreement between French and Lennox and myself, I have no recollection of such an
257 agreement, although I think something was said about it after

the meeting at my house. I think something was said after that meeting, and some suggestions were made as to a transfer of some of the French and Lennox stock to Mr. Brent and myself; but it never assumed the shape of any agreement, so far as I was concerned. If the question refers to the substance of the main agreement, made at my house, then I have to answer that by that agreement French and Lennox were not to assign stock to anybody; they were to convey or grant all their right, title, and interest in and to the property in question to a corporation, the capital stock of which was to be three hundred thousand dollars, represented by three thousand shares, of a hundred dollars each, of which French was to have a certain number, and Lennox a certain number, and the residue distributed among the parties to the contract.

9th question. If French and Lennox, the owners of the stock, could not assign it, by what authority did you divide it out and assign it in French's absence?

Answer. It was not divided out in Mr. French's absence. French and Lennox could not assign the stock until they got it, and they could not get it until a corporation was reorganized or organized and stock issued, or until there was an agreement as to the basis for a corporate organization, and the issuing of stock. Such was the agreement made at my house, to which Mr. French and Mr. Lennox were parties, and which the amount of stock to be distributed to each individual interested was distinctly specified and agreed upon, and understood and known to everybody present, including French and Lennox, and afterwards inserted in the written contract, and according to the precise amounts thus understood and agreed upon at that meeting.

10th question. Look at the letter dated November 15th, 1866, and the envelope enclosing the same, directed to James S. French, esq., Alexandria, and say whether the endorsement of figures on said envelope is in your handwriting, and was made at the meeting aforesaid?

258 Answer. The letter and envelope were disconnected from each other. The endorsement of the figures written across the envelope is, I think, in my handwriting, but whether made at the meeting or not, I cannot say, for I have no recollection of making them, though I have no doubt I did make them at some time. We figured a great deal at that meeting, and I assisted in making the calculations. I presume these figures, from the letters applying them, referred to the stock and the distribution of it, discussed at that meeting, if they do not indicate correctly, in detail, the manner in which it was agreed ultimately that the distribution should be made. It appears by the figures that six hundred shares, if they represented shares, were to be distributed jointly to S., B., & M., and I presume that the initials there intended to designate Mr. Dean Smith, who was Shoemaker's counsel, Mr. George Brent, who was counsel for Mr. French and Mr. Lennox, and myself, who was counsel for Mr. Stevens and Mr. Phelps. Now, it is positively certain that there was no agreement to issue any shares of their stock to those gentlemen jointly. Mr. Brent, as counsel for French and Lennox in this, and probably other business, was to receive a certain number of shares, and Mr. Smith was to receive a certain number of shares; and in the preliminary discussions which led to the final agreement at the meeting, it was suggested that, as the counsel of Stevens and Phelps, some number of shares should be issued to me, but I did not wish to have them so issued, and if I was to receive anything, desired and stated that it should be by and through my clients, Stevens and Phelps; and, as I have already stated, the stock to be issued to them was to be enlarged

to suit their exigency. I judge the paper to have been written in the course of the negotiations, but, as stated before, it does not, in its detail, correctly represent the distribution of stock in the manner in which it was at that meeting agreed that it should be distributed.

At 6 p. m. Mr. French refused to go on with the cross-examination of the witness, although the counsel were willing to go on; but Mr. French protested, and requested his counsel not to proceed further, where-
259 upon the further taking of these depositions was adjourned until to-morrow, the 8th day of December, 1869, at the same place, at 10 o'clock a. m.

FRANCIS L. SMITH, JR.,
Examiner.

IN CLERK'S OFFICE,
U. S. CIRCUIT COURT, DIST. VIRGINIA,
Richmond, March 7, 1870.

A true copy of depositions filed in suit of French vs. Shoemaker, depending in this court.

Teste: W. H. BARRY, *Clerk.*

260 54.—*Exhibit with Merrick's dep'n.*

ALEXANDRIA, *Nov.* 15*th*, 1866.

JAMES S. FRENCH, Esq.,

DEAR SIR: In reply to your inquiry I beg leave to say, that the case of the Alexandria & Washington R. R. Co. vs. the W., A., & G. R. R. Co. is one that must result in the triumph of the company you represent. The sale by Stuart to Hay was not only irregular & illegal, but entirely without authority. The sale & conveyance will be set aside.

Nor have I any doubt of the result of your suit against Stuart for the house. This sale was without authority & the fraudulent purposes of the parties are clearly manifest.

Yours truly,

GEORGE W'M BRENT.

262 (Indorsed:) This is the envelope endorsed James S. French and contains a letter from George W. Brent to James S. French, dated Nov. 15th, 1866, and referred to in Mr. R. T. Merrick's cross-examination.

FRANCIS L. SMITH, JR.,
Examiner.

DECEMBER 7TH, 1869.

263 55.—*Deposition of J. Dean Smith.*

J. DEAN SMITH, being duly sworn on the Holy Evangelist of Almighty God, deposeth and saith as follows:

By George W. Brent, counsel for Samuel M. Shoemaker:

1st question. Were you a party to this agreement of the 6th day of Dec'r, 1867, between S. M. Shoemaker, James S. French, Walter Lennox, and others; and if yes, state all the circumstances which led to its execution?

Answer. I am a party to that agreement. Sometime in the latter part of November, 1866, Mr. Stevens proposed to Mr. Shoemaker and myself, at their request, that we should meet Mess. French and Lennox

to confer about the condition of the railroad property between Alexandria and Washington, and we did meet those gentlemen at the house of Mr. Merrick. A good deal of conversation took place, and the result of the interview was that French and Lennox stated that if Mr. Shoemaker, on behalf of the Adams Express Company, or his own, would assume to pay all the liabilities of whatever nature upon said road, that they would assign their interest in the stock of the Alexandria and Washington Company, to be divided in proportions set out in the agreement. Mr. Shoemaker did not at that interview bind himself to that proposition on his part, and we did not consider that Mess. French and Lennox were bound upon their part, it being an important matter and involving expenditure, as I supposed, of at least two hundred and fifty thousand dollars. It was necessary that it should receive mature consideration. Sometime after this interview, and I think early
264 in January, 1867, I was requested to meet Mr. Lennox, Mr. Brent, and Mr. Stevens, at the office of Mr. Merrick, for the purpose of putting in writing the propositions of the parties in the first interview. I meet these gentlemen and the agreement was put into its present shape. Mr. French was not present at that interview, and it was fully understood that without his signature the agreement would not be binding on any party, and I signed it with that understanding and took it to Baltimore and shewed it and explained it to Mr. Shoemaker, who, throughout the whole negotiation, depended upon my judgment as his counsel and the counsel of the Adams Express Company, and, deciding upon what was to be done, I told Mr. Shoemaker that Mr. Lennox thought that Mr. French would sign the agreement upon his return from Southwestern Virginia, as it was manifestly to his interest. But, that if he signed it and French refused, that he was not bound by its terms. Upon this representation, after some days of consideration, I don't recollect how many, Mr. Shoemaker signed the agrement, and it was sent to Mr. Brent to be presented to Mr. French for his signature, when he should return, sometime in February or March, 1867. I learned that Mr. French had refused to sign the agreement, and from that time until perhaps in the early summer of that year, Mr. Shoemaker and myself had several interviews with Messrs. French and Lennox in regard to the railroad matter. In these interviews the object of Mr. French was to induce Mr. Shoemaker to make some specific advance to him, the amounts of which he varied, from time to time, from two or three thousand to fifteen or twenty thousand dollars, and to get some agreement to pay him as part of the indebtedness of the road, certain judgments, the aggregate amount of which was variously stated by him. To the first propositions, Mr. Shoemaker and myself, Mr. Shoemaker always speaking through me, always answered that when Mr. French had established his title, that upon his interest Mr. Shoemaker would make such advance as would be prudent. That meantime, if he signed the agreement, that Mr. Shoemaker would provide for he and Mr. Lennox by making them a monthly payment of a certain amount. And in one of the interviews proposed, I think, about twenty-four hundred dollars a year. This proposition Mr. French rejected with scorn, and said that it would not pay his liquor bill, and it became evident
265 to us that it was useless to waste our time in further negotiations. We, therefore, considered, and I so stated to Mr. Lennox, who came to Baltimore to see me, as before stated, for the purpose of asking me whether I considered that he or any of the parties were bound by the agreement, so far as it had been made. What I said was, in substance, that the agreement had been signed by Mr. Shoemaker

and myself, at least with the clear understanding, that in fact it was no contract or agreement without Mr. French's signature, and in fact there could be no obligation upon Mr. Shoemaker or any one else, until he signed it. After this, and sometime in the fall of 1867, I heard, I think from Mr. Lennox, that Mr. French desired to meet Mr. Shoemaker and myself, in Washington; we did, I think, meet at the office of the express company; but Mr. French and Mr. Lennox both stated that they had very pressing need for money, and desired to renew the negotiations, upon the basis formerly contemplated. Mr. French stated, I think, that required some three or five thousand dollars to put his farm into working order, and Mr. Lennox said there was a judgment pressing upon him for about three thousand dollars, under which his property was about to be sold, and they desired that if Mr. Shoemaker would advance these sums, to execute the contract and carry it into effect. By this time Mr. Shoemaker and myself had determined to have nothing further to do with Mr. French without putting into the contract, or attaining the same object by the execution of another paper, a conveyance of his whole stock interest in the railroad to Mr. Shoemaker, as trustee, for the parties to the agreement. I think that I so stated, but of this I am not certain; but this was the determination we came to, and without this conveyance, were not willing to revive the contract. At either this interview or at some subsequent one, Mr. French again introduced the subject of the Hay judgments, and I think, in order to get his views, I took a memorandum of his statements in regard to them, but we told him then, as we had always told him whenever he broached subject, that if these judgments were a valid lien upon the road, that Mr. Shoemaker would be bound under the contract to pay them. Mr. Lennox and Mr. Brent had always insisted that this was the only answer to be given to Mr. French's pretensions in this
266 regard, and I fully agreed with them. Mr. Shoemaker and I never in any way promised or agreed, up to this time, to pay or in any way to countenance or acknowledge, that these judgments were to be paid to Mr. French or to Mr. Lennox, as a matter of contract upon our part; the whole negotiation or endeavor on their part was to induce Mr. Shoemaker, by stating their necessities, to advance them money. About the latter part of September, I think, of that year, Mr. Lennox through the Messrs. Bradley, begged Mr. Shoemaker to take up a judgment under which his property was advertised to be sold, offering to give to Mr. Shoemaker a clear conveyance of his stock interest in the railroad. Mr. Shoemaker, at my urgent request, agreed to pay this judgment, and Mr. Lennox conveyed his interest. This transaction had no dependence upon, or reference to, the agreement afterwards executed. After this, and in the first week in December, 1867, Mr. Stevens informed us that Mr. French desired him to apply to Mr. Shoemaker for five thousand dollars, to convey to Mr. Shoemaker his stock interest in the railroad to secure the payment of that sum, and to be held by him as a trustee, for the parties to the agreement of the 6th of December, 1867, which he agreed to execute at the same time. Mr. Shoemaker agreed to advance the money if Mr. French would execute the conveyance which is made an exhibit with Shoemaker's bill in this cause, and execute the agreement, also made an exhibit, and I so advised Mr Stevens, who acted for Mr. French in the application. I then went to Washington and paid the money and notes to Mr. Stevens, and found in his hands the papers already executed by Mr. French, which he handed to me upon the receipt of the five thousand dollars. I did not, nor did Mr. Shoemaker in making this transaction,

have any interview with Mr. French; it was completed by Mr. Stevens who remitted to me a receipt in Mr. French's handwriting for the money, shewing the purpose for which it was paid; during the whole of our intercourse with Mr. French and Mr. Lennox, neither Mr. Shoemaker or myself ever used any threats or coercion of any kind, to induce either of these to make the said conveyances. But, on the contrary, the money advanced to them was advanced upon their earnest solicitation, and the conveyances were tendered and made by them, and not solicited by either Mr. Shoemaker or myself, which said receipt is herewith produced and filed, as Exhibit J. D. S., No. 1.

267 2d question. Did Shoemaker agree at the meeting at Mr. Merrick's, to advance James S. French $20,000, and Walter Lennox, $10,000 on the faith of said contract?

Answer. He did not, either then or at any other time.

3d question. Did Lennox complain of French's delay in executing the contract?

Answer. Yes, very frequently I suppo— every time we met until the contract was executed.

4th question. Did French, at the house of Merrick, demand and claim the amount of the Hay judgment as being due him?

Answer. No; I never heard of any such claim until, I think, at the interview in which Mr. French rejected our proposition to pay the twenty-four hundred dollars per annum. He may have spoken of these vaguely, but I feel quite certain that this was the first time that I heard of his claim to be personally the owner.

5th. question. Were you present at a meeting at the office of Walter Lennox with any of the parties to said contract? If yes, state where it took place, and who were present?

Answer. The meeting took place, I think, in the latter part of September, 1868, and was called in a formal notice—one similar to Exhibit G. W. B., No. 2—by Walter Lennox. There were present Mr. French and his counsel, Mr. Claughton, Mr. Brent, and Mr. Merrick, Mr. Lennox, Mr. Stevens, and myself. This was in Washington City.

268 6th question. Did Lennox claim at said meeting that Shoemaker had agreed to advance French $20,000, and Lennox $10,000, and did you and O. A. Stevens agree to it?

Answer. I certainly did not understand Mr. Lennox as making any such claim, and I certainly did not assent to any such claim, nor did Mr. Stevens. Neither of us had any authority to do so, if we had been so disposed. As for myself, finding Mr. French accompanied by Mr. Claughton, I at once inferred that their appearance there together indicated a hostile purpose, as Mr. French, as I understood, had already shown in various ways his intention to violate, so far as he could *he could*, the contract he had entered into; and when Mr. Lennox opened the meeting, with due allusion to what had occurred between him and Mr. French, in his office, before the meeting at Mr. Merrick's, and while he disclaimed wanting anything himself, spoke of Mr. French's, in that conversation, stating that he would require a large advance. I at once saw that the attendance there of Mr. French and Mr. Claughton indicated a purpose on Mr. French's part to extract some money by a shew of hostility, and was entirely on my guard, and neither said or did anything to countenance such extortion.

7th question. Did French say anything at said meeting?

Answer. I do not think that he did, nor do I recollect that he did. I should say that he did not.

8th question. Was Walter Lennox satisfied with the said contract, and did he express himself anxious to carry it out?

Answer. Always. I never heard anything from Mr. Lennox but expressions of entire satisfaction with the contract, until read an affidavit by him in this cause.

269 9th question. Examine Exhibit G. W. B., No. 7, filed in this cause, and state what it is, and whether it is a true copy.

Answer. It is a copy of the record of the proceedings of the meeting held on the 26th of September, 1868, by the parties to the agreement of the 6th of December, 1867, and is a true copy of the proceedings.

10th question. Was a stockholders' meeting called as contemplated by the proceedings referred to in Exhibit No. 7? And if yes, state when it was called, by whom, and where held.

Answer. It was called by Mr. Lennox, by public notice, according to the code of Virginia, and was held in the Mansion House, at Alexandria, Virginia, on the 29th of October, 1868. At this meeting Mr. Lennox took a prominent and active part, and was elected a director.

11th question. Was Walter Lennox present at said stockholders' meeting, and did he participate and vote therein?

Answer. He was present, and he did vote.

Cross-examined by L. B. Taylor, counsel for James S. French.

1st question. I understand you to say that, at the meeting at Merrick's office, in the latter part of November, 1866, no verbal agreement was made; do I rightly understand you?

Answer. No verbal agreement was made, further than was stated in my testimony-in-chief.

270 2nd question. If no agreement was made, was it bad faith in French to refuse to sign an agreement, afterwards made, when French was not present?

Answer. This is a question in morals which is hardly pertinent to this examination.

3d question. You say some time in January, 1867, you were requested to meet Messrs. Lennox, Brent, and Stevens, at the office of Mr. Merrick, for the purpose of putting in writing the propositions of the parties in the first interview; state by whom you were requested?

Answer. I think either by Mr. Stevens or Mr. Lennox; I cannot say which.

4th question. As you state French had made no agreement at that time, by what authority did you aid in dividing out French's property in his absence, reduced to writing said contract, and signing the same?

Answer to the 4th. I am not at all that I did divide French's property. The writing at Mr. Merrick's office was made at the special instance and request of Mr. Lennox, who aided in the preparation of it, who, as I understood, represented Mr. French's views.

5th question. You say you took the agreement to Baltimore, and after some days of consideration, Mr. Shoemaker signed it; how much of the stock of the A. & W. R. R., of which French owned three-fourths, did you, in said agreement, assign yourself and Mr. Shoemaker?

Answer. The agreement of the 6th of December, 1867, filed in this cause, as on exhibit, shows the proportion assigned to each of us.

271 6th question. After Mr. Shoemaker signed the agreement, you say you sent it to Mr. Brent, to be presented to French for his signature; was it bad faith in French to refuse to sign the agreement he had not made?

Answer. I answer that question as I did the other; it is a question of morals and of mere opinion, which is not pertinent to this examination.

7th question. State how much of the stock of the Alexandria and

Washington Railroad was assigned to Stevens and Phelps in the agreement you signed, and what were the considerations for which it was signed.

Answer. The agreement in both of these particulars speaks for itself.

8th question. At this time, you say, no agreement had been made; state what inducement then was there for assigning them any stock at all.

Answer. According to my understanding, there was no assignment of stock to them, until the execution of the agreement and conveyance of the 6th of December, 1867.

9th question. After French had refused to sign the agreement which you were instrumental in making, why was it not cancelled; why preserved for a year? State who kept possession of it?

Answer. I think the paper was in the possession of Mr. Brent or Mr. Stevens; why it was not cancelled I cannot say. I supposed it was preserved upon the supposition that Mr. French eventually would find it to his interest to execute it, as he did.

272 10th question. After the meeting at Merrick's office, it was reported that French and Lennox had conveyed to Mr. Shoemaker a majority of their stock in the A. & W. R. R.; was not such a report detrimental to French's interest, and would not such a report prevent other persons from aiding French in establishing the title of the A. & W. R. R.?

Answer. I knew nothing of such reports; but I should incline to think that if such reports were circulated and other parties were desirous of dealing with French, it would be advantageous rather than detrimental, for looking at it from my standpoint, I have always regarded it as a capital arrangement for French.

11th question. Did Mr. Geo. W'm Brent when he and you signed the agreement, understand that Mr. Shoemaker assumed no obligation under it, and was not bound by the agreement?

Answer. I am not aware of what Mr. Brent's understanding was; my own is fully stated in my examination-in-chief.

12th question. You have heard the testimony of Mr. Merrick and have said that you were present at the time of the verbal agreement referred to by him, as having been made at his house; was it not distinctly understood and agreed, at that time, that you and all the parties to that agreement were to lend your aid, and to do all in your power to defeat the claim of the Washington, Alexandria, & Georgetown Railroad Company, in the suit then pending between that company and the Alexandria & Washington Railroad Company, in the circuit court of Alexandria County?

Answer. There was no such understanding or agreement.

13th question. At the time of the verbal agreement referred to in the last question, were not you and Shoemaker, and Stevens and

273 Phelps, officers in the Washington, Alexandria, and Georgetown Railroad Company; if so, what offices did you and they hold, at that time?

Answer. Mr. Shoemaker, Mr. Stevens, and myself had been fraudulently elected, without our knowledge of the fraud, directors of that company, but were not, I think, at the time of that agreement, any longer such. Stevens and Phelps had been officers prior to the date of their lease, under which, as lessees, they are spoken of in the agreement.

14th question. State what interest you claim to have in the Alexan-

dria and Washington Railroad; if any, state when acquired, and what consideration did you pay for the same?

Answer. I claim to be the owner of 200 shares of the stock of that company, the right to which I acquired under the agreement and conveyance of the 6th of December, 1867; the consideration is to be found in the agreement itself.

15th question. After French signed the agreement, were not all the parties thereto bound in good faith to sustain and endeavor to establish the right and title of the Alexandria and Washington Railroad Company?

Answer. I think they were; and, so far as I know, have met that obligation fully.

16th question. Did not Messrs. Stevens and Phelps, by R. T. Merrick, their counsel, file their answer in the suit of the Alexandria and Washington Railroad Company vs. the Washington, Alexandria, and Georgetown Railroad Company, pending in the circuit court of Alexandria, in which they prayed the court to dismiss the suit which French had brought to establish the title of the Alexandria and Washington
274 Railroad Company, after *Merrick* [Stevens & Phelps] had signed the agreement, and they were all united in interest?

Answer. I do not know; the record of that suit will show.

17th question. Look at the record of said case, page 328, and say if the same does appear there as stated.

Answer. I know nothing about it. The record will speak for itself.

18th question. Did you not, after French signed the agreement as counsel for Shoemaker, bring a suit for the Adams Express Company against *James* [Joseph] Davison and others, in which the validity of the Washington, Alexandria, and Georgetown Railroad Company is advocated, and a contract made with said company is claimed to be a subsisting contract; and do not Stevens and Phelps hold possession as receivers, appointed in said case, against the interests of the Alexandria and Washington Railroad Company?

Answer. I did not bring a suit in behalf of the Adams Express Company as its counsel. I do not recollect the precise statements and charges in the bill, which is of record in the court in which this cause is pending. I do not recollect that contracts made with the Washington, Alexandria, and Georgetown Railroad Company are claimed to be subsisting contracts, and Stevens and Phelps do hold possession as receivers appointed in said cause, but not, as I understand it, against the interest of the Alexandria and Washington Railroad Company, which has no right to its possession.

19th question. Was not the filing of said bill, and the appointment of Stevens and Phelps as receivers, injurious to the interest of said French?

275 Answer. I think not.

20th question. Does not the said Shoemaker, in said suit just referred to, state that it is a supplement and auxiliary to a suit—a certain other suit brought by Horatio G. Riddle and others against James S. French—in which said suit James S. French is enjoined from asserting or claiming any interest in the Alexandria and Washington Railroad Company, or taking any steps to establish the rights and title of said company?

Answer. Both of those suits are of record in this court, and a reference to the record will show.

21st question. Do you know, or have you not heard, that in the suit

referred to, pending in the United States circuit court for Virginia, French was enjoined as above stated?

Answer. I think I did hear, at the time the Riddle suit was brought, that said injunction had been issued.

22d question. Was not one of the objects of the suit of the Adams Express Company vs. Marbury and others to keep the road under the control of Shoemaker and Stevens and Phelps as a means of forcing French to submit to the contract, as interpreted by them and yourself?

Answer. It was not.

23d question. Did not you and George W. Brent, as counsel for Adams Express Company, obtain a rule against James S. French for contempt in obtaining possession of the road under the decree in favor of the Alexandria and Washington Railroad Company, and insist upon his being punished for obtaining said possession?

276 Answer. We did.

24th question. Were you not, by resolution of the board of directors of the Washington, Alexandria, and Georgetown Railroad Company, empowered to represent that company, as their solicitor, to settle or compromise the suit pending in the circuit court of Alexandria County, between the Washington and Alexandria Railroad Company vs. the said Washington, Alexandria, and Georgetown Railroad Company?

Answer. Some time in June, 1866, the board of directors passed a resolution empowering me to settle or compromise that suit, but I never acted in the matter or accepted the employment, as difficulties arose in regard to the resolution.

25th question, Did you notify the board that you declined so to act?

Answer. I do recollect.

J. DEAN SMITH.

At 11.30 p. m., Mr. French asked for and insisted upon an adjournment of taking these depositions, and stated that he would stay no longer. The witness, Mr. J. Dean Smith, asked that the cross-examination might proceed, stating that it would be impossible for him to be present either to-morrow or Saturday. Mr. French's counsel agreed with him in asking the adjournment until to-morrow, and the counsel of Shoemaker were desirous that the cross-examination should proceed.

FRANCIS L. SMITH, JR.

Under the circumstances above stated, Mr. J. Dean Smith, the witness, demanded the right of signing the deposition, which the examiner allowed him to do, with the following comment, and submitting

277 the matter to the opinion of the court:

Mr. French, *Mr. French*, as well all the other parties were present yesterday, the 8th ult., from 10 o'clock in the morning to 12.30 a. m., with a recess of two hours, and to-day from 10 o'clock in the morning until 11.30 p. m., at which hour Mr. French and his counsel asked for the adjournment.

FRANCIS L. SMITH, JR.,
Examiner.

The further taking of these depositions is adjourned until to-morrow morning, the 10th day of December, at 10 o'clock, a. m., at the same place.

FRANCIS L. SMITH, JR.,
Examiner.

OFFICE OF FRANCIS L. SMITH, JR.,
Alexandria, Virginia December 10th, 1869.

Present: George W. Brent, counsel for Samuel M. Shoemaker, and J. Dean Smith, the witness last examined, and H. O. Claughton, counsel for James S. French, and James S. French.

The cross-examination of J. DEAN SMITH, which was suspended at 11.30 p. m. last night, is now resumed.

26th question. State what sums of money you have received from Stevens and Phelps, or either of them, or from S. M. Shoemaker, in money or checks, or from J. H. Lathrop, the receiver, in Washington, for services or expenses incurred, directly or indirectly connected with the Washington, Alexandria, and Georgetown Railroad Company?

Answer. It is impossible for me to state what sums of money have been paid me by these parties, except in one instance, when I recollect to have received from Stevens and Phelps, and J. H. Lathrop, jointly, the sum of two hundred and fifty dollars, for services rendered
278 them. Mr. Shoemaker has paid me for my services and expenses in connection with the Adams Express contracts. I cannot state from memory how much.

27th question. State what debts against the Alexandria and Washington Railroad Company S. M. Shoemaker has paid, under the agreement of December 6th, 1867, since French signed the agreement.

Answer. The only one that I know that he has been called upon to pay, was a judgment upon the road, upon which an execution was about to issue, and which, under the advice of Mr. Brent, he compromised for twelve hundred dollars, which Mr. Shoemaker paid, and took an assignment of the judgment.

28th question. Are you certain that Shoemaker took an assignment of the judgment?

Answer. I have never seen the assignment; Mr. Brent attended to the whole affair, and I think, he so informed me.

29th question. State in whose name the judgment referred to was obtained, and whether it was not for a lot over which the A. & W. R. R. Co. laid its track, and whether the lot was not bought by S. M. Shoemaker, individually, and conveyed to *have* individually?

Answer. I understood that the judgment grew out of a contract for such a lot; I do not know with whom made; Mr. Brent informed Mr. Shoemaker that it was advisable to pay the judgment, which he did in execution of his part of the contract of the 6th December, 1867, to that extent. How the judgment was assigned, I have before said that I do not know, but the money was paid, as I have stated, and the judgment is held for the benefit of the parties to that agreement.

279 30th question. Is there any provision or even a word in said conveyance to show said purchase or payment was made for the benefit of the A. & W. R. R. Co., or the parties to the agreement?

Answer. I have already said that I know nothing of this transaction except that Mr. Shoemaker paid the money and took the assignment under the contract.

31st question. The purchase of said lot being made by Shoemaker, and the conveyance being made to him individually, does it not enure to his personal benefit; and how can it be made to appear it was for the benefit of the parties to the agreement?

Answer. I have already said two or three times that this purchase was made in part execution of the contract of the 6th December, 1867. It will appear by their testimony that it was so made if in no other

way. Mr. Brent acting in the interest of the parties to the agreement, advised him to purchase, and taking the assignment was fully aware that it was done as I have stated. How he took the assignment I do not know; it is of record, and will speak for itself.

32d question. Has Shoemaker paid any debts of the A. & W. R. R. Co., other than what you allege he has paid in the foregoing answer?

Answer. Not that I know of.

33d question. Was it not understood and agreed, at the meeting at Merrick's office, in November, 1866, that Shoemaker was to furnish the means to carry on the litigation to establish the title of the A. & W. R. R. Co.?

280 Answer. I have already answered that there was no such agreement or understanding.

34th question. Who was it understood was to pay the expenses of the litigation necessary to establish the title of the A. & W. R. R. Co?

Answer. There was no understanding about the matter, so far as I know.

35th question. Do I understand you as saying that French and Lennox were to incur the expense of establishing the title of the A. & W. R. R. Co., and after doing this the stock was to be distributed among parties who had in no way contributed to their success?

Answer. The whole sum and substance of the agreement is to be found in the contract and conveyance of the 6th December. The contract was, according to its terms, to go into effect upon the rendition of a decree of the circuit court; that decree was rendered on the 24th August, 1868. I think whether French & Lennox were to pay the costs of the suit, as I have said before, there was no understanding. The agreement in regard to the latter part of the question, shows how the stock was to be distributed.

36th question. If the contract was not to go into effect till the title of the A. & W. R. R. Co. was established, were not French & Lennox obliged to incur the expense or abandon the suit?

Answer. I can't say.

37th question. Was not Shoemaker bound, under said agreement, to pay the debts of the A. & W. R. R. Co.?

281 Answer. The contract itself shows what his obligations were.

38th question. Did you or Shoemaker ever try to ascertain what were the debts of the A. & W. R. R. Co., with a view to paying the same, since French signed the agreement?

Answer. I examined the report of Yeaton, commissioner, in the French suit, to ascertain at what sum he put the debts. I have several times estimated them from other data. We are ready to pay any or all of them, when it shall become necessary and proper to do so.

39th question. Do you or not believe, all the creditors of said road want their money, and have wanted it, at least, since French signed the agreement? Do you not know that French was, and is, in great want?

Answer. Creditors always want their money, and I suppose those *of* the road owe are no exception to the rule. So far as I know, there is not a single debt due them, which is ascertained and in a condition to justify its payment, under the contract, save the one already spoken of as having been paid. I only know of Mr. French's claim and his condition from his own statements.

40th question. State what you mean by being ascertained and in a condition to be paid, under the contract; there are unsatisfied judgments, bonds, other accounts and undisputed debts against the A. & W.

R. R. Co., secured by a trust deed; are these not in a condition to be paid, or at least, some of them?

Answer. I mean by ascertained and adjusted claims, about which there can be no question; and that my own knowledge, and so
282 far as I am advised by Mr. Brent, on whom we rely especially in this matter, there are no such claims.

41st question. Have you examined Commissioner Yeaton's report in the case of the A. & W. R. R. Co. vs. W., A., & G. R. R. Co.?

Answer. I have already stated that I examined the reports to ascertain amount at which he put the indebtedness.

42d question. Did you not find in said report a very large indebtedness claimed by French against the A. & W. R. R. Co.?

Answer. The report, I believe, is not filed in this cause; it would speak for itself if it should be. I am not familiar with it in detail.

43d question. Did not S. M. Shoemaker, superintendent of Adams Express Company, enter into a contract with the Washington, Alexandria, & Georgetown Railroad Company, in 1866, to continue for ten years, in which he bound himself or said company to pay for the W., A., & G. R. R. Co, the debt due the city of Washington by the A. & W. R. R. Co.; if so, did he or you at the meeting at Merrick's office in Washington, so often referred to, state the same to French and Lennox? If Shoemaker is bound to pay the same for the W., A., & G. R. R. Co., how can he pay it for the benefit of the A. & W. R. R. Co., as he is bound, you say to do under the agreement, the debt being still unpaid?

Answer. Such a contract was made to pay that debt under certain conditions. I do not recollect whether that contract was mentioned at the meeting at Merrick's, but its existence was known, I think, to all the parties. Mr. Shoemaker is bound, under the contract in question, to pay that debt in any event, and is ready to do so when it is properly adjusted.

283 44th question. Have you at any time since you signed the agreement dated December 6th, 1867, or since French signed it, advocated the rights and title of the A. & W. R. R. Co.; if so name the times when, and where?

Answer. I have done all in my power, and using my own judgment with the light I have, to advance the interest of that company; if by advocacy is meant in the trial of the cause, I have not publicly advocated it in that sense.

45th question. Did not Shoemaker and yourself dispossess French of the possession of the A. & W. R. R., after, by a decree of the circuit court of Alexandria, he had obtained possession?

Answer. We did not, nor did we aid in doing so, except as is shown by the record in this case.

46th question. Does Shoemaker own Lennox's interest in the A. & W. R'road?

Answer. I think the conveyance of Lennox to Shoemaker is an exhibit in this cause, and I have already stated in my examination-in-chief, how and why it was executed.

47th question. If he does not, why was the conveyance to Shoemaker recorded, which shows on its face it was an absolute sale?

Answer. The conveyance was recorded as notice to all the world, and was made, I think, with the concurrence and assent, if not under the suggestions of Mr. Lennox.

48th question. When Lennox conveyed his entire interest in the A. & W. R. R. Co. to Shoemaker, to secure the sum of about three
284 thousand dollars borrowed of him, he also assigned to Shoemaker

other securities to secure said loan; why were not these facts stated in the assignment?

Answer. Mr. Lennox did not assign any other securities; the transaction, as I have stated, was made at the instance of the Mess. Bradly; and Mr. Tho's Bradley, as the friend of Mr. Lennox, received the money from me, handed the conveyance to me, paid the judgment, and I suppose had it assigned to Shoemaker. If so, the records will show. I left the matter entirely in the hands of Mr. Bradley, and I think I never saw the assignment or any evidence of it.

49th question. Shoemaker, yourself, and other parties to this agreement, applied to Congress for a charter for a new road, and power to condemn and sell the road now laid in Washington City and claimed by the A. & W. R. R. Co., in which the names of French and Lennox, as corporators, are left out; why was this? Would not such a charter, if granted, have been independent of the present A. & W. R. R., and greatly have affected French's interests in said road?

Answer. We applied for that charter and power in the interest of the A. & W. R. R., as the best means of settling all the legal difficulties, and other embarrassments surrounding the property of the company in Washington. The names of French, Lennox, and Brent, were not inserted, as they did not, it was supposed, add anything to the chances of success of the bill before Congress; if the charter had been granted it would have been held and used for the benefit of the A. & W. R. R. Co., and would have greatly benefitted French's interest. Mr. French was not informed of it, as he had ceased all intercourse with the other parties to the contract.

50th question. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue
285 in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause?

Answer. I do not.

And further this deponent saith not.

J. DEAN SMITH.

IN CLERK'S OFFICE,
U. S. CIRCUIT COURT, DIS'T VIRGINIA,
Richmond, March 7, 1870.

A true copy of depositions filed in suit of French vs. Shoemaker, depending in this court.

Teste: W. H. BARRY, *Clerk.*

286 56.—*Exhibit with Smith's dep'n.*

ALEXANDRIA, VA., *Dec. 7th*, 1867.

Received by the hands of O. A. Stevens, the sum of three thousand dollars, and two notes for a thousand dollars each, payable four months after date, making five thousand dollars, paid me on account of S. M. Shoemaker, as set forth in an assignment and agreement dated Dec. 6, 1867, between myself, Walter Lenox, S. M. Shoemaker, and others.

JAMES S. FRENCH.

287 (Indorsement:)

This is the paper produced by J. Dean Smith, in his deposition as Exhibit J. D. S., No. 1, and filed by him as such.

FRANCIS L. SMITH, JR.,
Examiner.

288 In circuit court of U. S., dist. of Va.—In equity.

SHOEMAKER
vs.
FRENCH.

The affidavit of J. Dean Smith.

This affiant says that some time in the month of November, 1866, he was requested to meet with the defendant and Walter Lenox claiming to own the whole interest in the Alexandria & Washington Railroad Company, and had filed a bill in the circuit court of Alexandria to establish the same as against the Washington, Alexandria, & Georgetown Company which claimed to succeed the French company; this meeting was to be had at the office of R. H. Merrick, in Washington, and there was present S. M. Shoemaker, O. A. Stevens, Merrick, French, Lenox & affiant.

French and Lenox represented that their suit would be soon decided, and would annul, and set aside the title of the other and later pretended company, and this affiant, having carefully examined the pretended title of the Washington, Alexandria, & Georgetown Railroad Company, he was fully satisfied that it was fraudulent and void, and must be set aside by any court of equity which properly considered it, and he was further satisfied that the then president and directors of
289 that company were fraudulently elected, and had no de jure title to act as such, and had so advised his client, S. M. Shoemaker, who, with the affiant, had been elected illegally, such directors, through the fraud of certain persons, which this affiant and said Merrick had discovered in the preperation and trial of causes then pending in the supreme court of the District of Columbia, which had been elaborately argued but were not then decided. In one of these cases, brought to enjoin said Shoemaker, Stevens, and this affiant from acting as directors, and the other [unsolved] the question of the legal election of a board of directors, in which none of them were included; and if such directors were legally elected, of course superseded the old board of which they were members. In both of these cases the question of the fraudulent character of the whole issue of stock [unsolved,] and was the question which induced the court, when it did decide the preliminary motions for [injunction] and [receiver,] to grant them both, and so enjoined affiant, & said Shoemaker, & Stevens, and took possession of the road, by a receiver, as was also done in Davison's case in Virginia. These motions were decided by the court early in January, 1869, but both Merrick and affiant had, from the first, advised their client that the frauds were such as must determine the cases as the court decided at the said meeting; therefore
290 said French & Lenox were informed that, until such decision, this affiant, Shoemaker, and Stevens could not agree to any present dealing with them for their title, and could make no agreement with them to conduct, pay for, or in any manner aid them in their suit, but would, when enjoined, and no longer de facto officers of said company, *to* take their title when it was established in the circuit court of Alexandria County.

After the decision of the suits of Davison & others in supreme court of district, and of Davison alone in the circuit court of Alexandria County, by which the affiant, Stevens, and Shoemaker were deposed and enjoined, a paper was prepared by Lenox, Merrick, affiant, and Stevens, a copy of which is filed as an exhibit with the bill in this cause, but the

defendant, without whose signature it was of no effect, refused to sign it, and it was considered of no binding obligation on any of said parties, of which said French was fully aware. There was no understanding or agreement, at the first or any subsequent meeting of said parties, nor at any time, to advance a dollar to said French or said Lenox, but they were told that when their title had been established by the circuit court of Alexandria County, that Shoemaker or the Adams Express Company would, in their discretion, make them advances; but the whole of the negotiations and dealings of said Stevens & Shoemaker & affiant depended upon the signing of said French, and the establishment of the title of the said Alexandria & Washington Company. On the
of December, 1867, the circuit court did pronounce *of* decree
291 that the said company's title was good, and the title of the Washington, Alexandria, & Georgetown Company fraudulent and void; and on the day of same month affiant was advised by Stevens that French had agreed to sign the paper—a copy of which is referred to above—and to make conveyance and assignment—a copy of which is filed with said bill as No. —for the consideration & noted in said paper; and affiant advised Shoemaker, who agreed to advance said sum, if the papers were properly executed and put into Stevens' hands, to be delivered when French secured the said deed. So affiant took said sum in money and notes to Washington, delivered the same to Stevens, and received from him the original of said copies, which had been executed by said French, and put into his hands for that purpose. And this affiant says that no threats, persuasion, or other means were ever used, to his knowledge, to induce said French to make such papers, but that they were made voluntarily and freely by him, and he sought Shoemaker and importuned them to have the transaction made, and that the whole dealing of said Shoemaker with him was most liberal and beneficial to French; that Shoemaker never received one dollar of money as treasurer of R. R. Co., and ceased to be such in Jan'y, 1867, being enjoined and deposed by district c't; that he is a man of large wealth and abundant
means, and perfectly able to pay the sum stated in his bill as the
292 debt of said R. R. company at any time; that the contract and agreement of said parties & Shoemaker was not to be carried into effect until final decree of circuit court of Alexandria County, which was not given until 24th of August, 1868, and immediately after Lenox called the parties together.

293 57.—*Exhibit with Smith's dep'n.*

OFFICE OF THE SECRETARY OF THE
WASHINGTON, ALEXANDRIA, AND GEORGETOWN RAILROAD COMPANY,
October the 1st, 1866.

At the meeting of the stockholders of the Washington, Alexandria, and Georgetown Railroad Company convened this 1st day of October, 1866, pursuant to the following notice, published for thirty days previous, to wit:

"*Stockholders meeting of the Washington, Alexandria, and Georgetown Railroad Company.*

"On Monday, the first day of October proximo, there will be a meeting of the stockholders of the Washington, Alexandria, and Georgetown Railroad Company held at the office of the secretary, No. 411 Pennsylvania avenue, in Washington City, for the election of five directors

for the current year, and the transaction of other important business appertaining to said company.

"A full meeting is respectfully requested.

(Signed) "JOSEPH B. STEWART,
"*Secretary W., A., & G. R. R. Co.*"

On motion, Joseph B. Stewart was appointed chairman of the stockholders' meeting, and W. Leski was appointed secretary.

294 On motion of Charles H. Stewart it was resolved a committee of three to appoint, to report what number of stockholders and proxies were present in person, or representing stock; which was carried.

The chair appointed Charles H. Stewart, Michael Warner, and Joseph Davison.

On motion of Joseph Davison it was—

Resolved, That the chairman of this meeting, Joseph B. Stewart, who is also the secretary of this company, make any report that he may deem proper for the information of the stockholders.

Carried.

Whereupon the chairman of the meeting read his report.

The report being read, on motion it was—

Resolved, That the report of the chairman be received as satisfactory to this meeting of stockholders, and the thanks of the stockholders are hereby extended to Joseph B. Stewart for his efforts to sustain the interests and to protect the rights of this company.

The committee on stocks and proxies made the following report:

That the committee find the stock of this company composed of 5,000 shares.

That the whole of this stock was issued to the proper parties, except 292 shares due to Joseph B. Stewart.

295 That on and after the first day of February, 1866, the following certificates of stock were issued, viz:

No. 63,	February	1st,	1866	....	250	shares	to	O. A.	Stevens.
" 64,	"	"	"	....	250	"	"	"	"
65,	"	"	"	....	250	"	"	L.	Huyck.
66,	"	"	"	....	250	"	"	"	"
70,	ante-dated Jan'y	4th,	1866	....	500	"	"	"	"
72,	February	3rd,	"	....	200	"	"	"	"
73,	"	"	"	....	300	"	"	O. A.	Stevens.
74,	"	"	"	....	1,000	"	"	L.	Huyck.
No. 75,	"	"	"	...	500	"	"	"	"
76,	"	"	"	....	350	"	"	"	"

In all 10 certificates for 3,850 shares.

That these shares are all over-issues, and are fraudulent, as Mr. O. A. Stevens never owned a share of stock up to that time, and that Mr. L. Huyck had drawn all this stock previous to this date; and there was no certificate returned or cancelled in the place of the certificate above set forth; that is, from 63 to 66, both inclusive; 70, and from 72 to 76, both inclusive—in all 10 certificates and 3,850 shares.

The committee recommend that these certificates, and quantity of stock they represent, be excluded, and not counted or voted in the election of officers for this company. The committee have no difficulty in arriving at the true character of these, as none of them have been transferred or reissued, and are therefore free from all doubt as to their

true character and condition. They are the only fraudulent or
296 over-issues of stock on the books of this company.

The committee further report that they find the following legitimate stock of this company present and represented, viz:

Joseph Davison	84	shares.
Cha's H. Stewart	333	"
L. Huyck	1,523	"
Robert W. Latham	10	"
C. R. Coleman, cash'r, by Michael Warner, pres't	1,250	"
J. B. Stewart	1,320	"
Total	4,520	"

Which, being more than a majority of the capital stock of the company, that the meeting is now prepared to proceed to the election of a board of five directors for the company, in place of the board whose term of office expired on the 5th of May, 1866.

On motion it was—

Resolved, That the report of the committee on stock and proxies be, and the same is hereby, approved and adopted, and spread upon the records of this company.

Carried unanimously.

On motion it was—

Resolved, That Michael Warner, esq., and Joseph Davison, esq., act as tellers in the announcement of the vote.

Carried.

297 For every ten shares of stock held by each stockholder present 10 votes were allowed on their first 10 shares, and one vote for each four shares of stock over and above 10 shares, as required by section 10 of the 57th chapter of the Code of Virginia.

The vote, being scaled and polled, resulted as follows:

Joseph Davison	84	shares	28	votes.
Chas. H. Stewart	333	"	90	"
L. Huyck	1,523	"	388	"
R. W. Latham	10	"	10	"
C. R. Coleman, cash'r	1,250	"	320	"
J. B. Stewart	1,320	"	337	"
Total	4,520		1,173	votes.

The vote for directors now being in order, the following persons were elected, each receiving the number of votes annexed to his name:

William Keyer of Baltimore	1,173	votes.
Joseph B. Stewart, Washington	1,173	"
Joseph Davison, Washington	1,173	"
Robert W. Latham, Brooklyn	1,173	"
Cha's H. Stewart, New York	1,173	"

The vote being called, the persons above named were each declared duly elected as directors of the Washington, Alexandria, and Georgetown Railroad Company for and during the current year 1866–'67.

On motion it was—

298 *Resolved*, That this meeting of the stockholders having duly considered the lease which purports to have been executed by the board of directors of this company, on the 5th day of May, 1866, to and with Oscar A. Stevens and W. Jackson Phelps, the same be, and is hereby, absolutely disapproved by the stockholders here convened.

Resolved further, That it is not in the power of the directors of this company to make any contract of lease or sale of the road, works, or franchises of the company without a recommendation by the majority of stockholders, and the approval of a majority of stock in a meeting convened for the purpose, as provided in the by-laws of this company.

On motion, the meeting took a recess until 8 o'clock p. m.

SECRETARY'S OFFICE OF THE
WASHINGTON, ALEXANDRIA, AND GEORGETOWN R. R. COMPANY,
Washington, D. C., October the 1st, 1866.

The stockholders met at 8 p. m., pursuant to adjournment.

The stockholders took into consideration certain proceedings had on the part of Samuel M. Shoemaker, J. Dean Smith, and Oscar A. Stevens, pretending to act as a meeting of directors of this company on the 14th day of August and first of September, 1866.

299 The proceedings of these two meetings were read for the information of the stockholders.

On motion it was—

Resolved, That the calling of said meeting by said Samuel M. Shoemaker, J. Dean Smith, and Oscar A. Stevens, on the 13th day of August, to convene on the next day, the 14th of August, after being notified by the secretary of this company that no meeting would be held on the 13th, and that he must be absent on that day, and for several days thereafter, and that said parties, knowing that neither the secretary nor president could or would be present on the 14th, acted in bad faith and contrary to the regulations of this company in pretending to hold said meeting for which they had no sufficient authority or right to do.

And be it therefore further

Resolved, That the resolutions passed by said parties in said pretended meeting on the 14th of August are based on a misrepresentation of facts, abound in false statements, and propose to disregard the acts and obligations of this company, stipulated by the stockholders in their dealings and transactions with D. Randolph Martin, esq., of New York, who is a bona fide creditor of this company for a large amount, and whose accounts have been fully settled, leaving nothing for the investi-

299½ gation of J. Dean Smith, or any other officious intruder into the offices of this company; and that the bonds of this company held by said Martin as security were placed with him by the stockholders of this company on the 11th day of February, 1864, who had a right to deal with their own property as they pleased, and that the statement that said Martin holds the bonds of this company without authority is false and impertinent.

Be it further

Resolved, That the resolutions passed by said parties directing the transfer of stock on the books of this company from the name of Leonard Huyck to Daniel Miller was a usurpation of power not delegated to the directors of this company, and is hereby censured and condemned as a gross infringement upon the rights of the stockholders of this company.

Be it further

Resolved, That this meeting, having considered the communication of their secretary, Joseph B. Stewart, dated the 27th of August, 1866, repudiating the action of said parties on the 14th of August, 1866, and refusing to admit the same to the records of this company be, and the same is, fully approved by this meeting, and the same be spread upon the records of this company.

Be it further

300 *Resolved*, That the action of said Shoemaker, Smith, and Stevens, on the 1st of September, in attempting to displace the secretary of this company, Joseph B. Stewart, and to presume to place Oscar A. Stevens in his stead as secretary was, and is, an unwarrantable abuse of their power and duty as directors. and that the said Joseph B. Stewart ever failed in the discharge of his duty to the company is false in every particular, and is condemned and repudiated by this meeting.

The foregoing resolutions were passed unanimously.

On motion, it was

Resolved, That Joseph B. Stewart is entitled to the thanks of the stockholders of this company for his untiring exertions to preserve, build up, and improve the value of their property, and that we hereby render our most thankful acknowledgments to him for his constant and laborious exertions in that behalf.

On motion, it was

Resolved, That in view of the existing state of complication and unnecessary antagonism that now exist, and is increasing between this company and the Adams Express Company, that the agreement heretofore made between this company and the said Adams Express

301 Company is likely to prove injurious and unsatisfactory, and that it is not desirable that it should be maintained or carried out; that it is better for this company to collect whatever charge it may deem proper from said Adams Express Company, or any other, for the carrying of its freight; and that we make our own negotiations for any funds that may be needed to meet any payments due to the corporation of Washington, and that a committee of three stockholders be appointed to make all proper negotiations in that behalf, and to report the same to a meeting of stockholders of this company to be convened for that purpose.

The chair appointed William Keyser, Robert W. Latham, Joseph B. Stewart, as said committee.

On motion, it was

Resolved, That, in view of the increased expenditures necessary for building depots, paying for real estate, and laying new *travels* on the increased route of the company, and for furnishing adequate rolling-stock commensurate with public wants, the compromise with the corporation of Washington, and other matters, the directors be, and are hereby, directed to consider the expediency of increasing the capital stock of this company to an amount not exceeding in all one million;

302 and, if so determined, to take the proper measures therefor, according to their discretion.

The motion was passed unanimously.

On motion of Cha's H. Stewart, it was

Resolved, That, whereas it appears that while the stock-certificate book containing certificates signed by the president and secretary in blank was in the custody of Oscar A. Stevens, as recording secretary of this company, Certificate No 71 was illegally and surreptitiously abstracted

from the book, and filled up with the name of said O. A. Stevens for three hundred shares, representing thirty thousand dollars, and that the same appears to have been used for the benefit of said O. A. Stevens and W'm J. Phelps, his co-lessee being endorsed by them, and thereafter returned to the stock book—

Be it resolved, That the directors investigate the same, and take such proceedings in relation thereto as the case may require; and also, that they investigate three other certificates issued by said Stevens to himself for eight hundred shares more under similar circumstances, and in excess of the company's entire capital.

Which was carried.

On motion, the meeting adjourned, subject to the call of Joseph B. Stewart, chairman.

(Signed) JOSEPH B. STEWART,
Chairman.

(Signed) W. LESKI, *Secretary.*

303 I hereby certify that the foregoing statement is a true abstract from the record book of the Washington, Alexandria, and Georgetown Railroad Company, as same appears of record.

JOHN STONE,
Record'g Clerk W., A., & G. R. R.

Sworn to and subscribed before me this 28th day of November, 1868, at Washington City.

EDW. F. BROWN,
Notary Public, also United States Commissioner.

(Indorsed:) Exhibit filed with affidavit of J. Dean Smith.

304 58.—*Deposition of O. A. Stevens.*

Mr. O. A. Stevens, having been first duly sworn on the Holy Evangelist of Almighty God, deposeth and saith as follows:

1st question. Were you a party to the agreement of the 6th day of December, 1867, between S. M. Shoemaker, Ja's S. French, Walter Lennox, and others? and if yes, state all the circumstances which led to its execution.

Answer to 1st question. I was a party to the agreement dated the 6th day of December, 1867. After repeated applications on the part of Walter Lennox, I went to see R. T. Merrick in regard to the suggestions made to me by Mr. Lennox. I consented to make one of the gentlemen who convened at the house of Mr. Merrick, some time in the year 1866, for the purpose of consulting together in reference to the different interests connected with the railroad of which I was then lessee. At the meeting there were present Walter Lennox, Ja's S. French, S. M. Shoemaker, Richard T. Merrick, J. Dean Smith, and myself. The conversation in regard to the road was, I think, first commenced by Mr. Lennox. There was a good deal said on the part of all present, the particulars of which I cannot now fully detail. The consultation referred to eventuated in a contemplated understanding as to the disposition of the interests of Messrs. French and Lennox in the Alexandria & Washington Railroad, the particulars of which are contained in the agreement dated the 6th day of December, 1867. Propositions and counter propositions as to a division of the stock of the Alexandria & Washington R. R. Co. were made by different parties present, resulting in an understanding

that it should be distributed as was done under the agreement dated the 6th day of December, 1867.

305 2d question. Did Shoemaker agree at the meeting at Mr. Merrick's to advance Ja's S. French $20,000 and Walter Lennox $10,000 on the faith of said contract?

Answer to 2d question. He did not, to my knowledge.

3d question. Were any threats or undue means used to induce or coerce said French to sign said contract?

Answer to 3d question. I know of none. On the contrary, Messrs. French and Lennox called at the office of the railroad co., on Maryland avenue, when they both stated to me that they had conversed together, fully and completely, in regard to the contract, and that Mr. French had concluded he would sign it. Mr. French then also desired that I should intercede with Mr. Shoemaker for the loan of $5,000 upon his interest, which I consented to do; the money was obtained, and by me handed to Mr. French, who seemed much gratified and pleased with my success in his behalf. This, I think, was in 1867, and after the signing of the agreement dated 6th day of December, 1867, and a further conveyance, bearing same date, on his part.

4th question. Did Lennox complain of French's delay in executing the contract?

Answer to 4th question. Mr. Lennox complained bitterly of Mr. French's want of good faith in refusing to sign the agreement; he did so upon all occasions in his conversation with me, but expressed the hope that he would conclude to do so, and thus make the agreement binding upon all parties interested therein.

5th question. Did you induce Mr. French to remove to Alexandria, with his family, after the execution of said contract?

306 Answer to 5th question. I do not believe anything which I may have said to Mr. French on the subject was an inducement for him to remove here. He had expressed to me a desire to locate his family favorably for educating his children, and I may have said that, with the surrounding circumstances, it might be well for him to do so. I have no recollection of holding out any inducement other than by general conversation in a friendly way for him to come to Alexandria and live.

6th question. Did French, at the house of Merrick, demand and claim the amount of the Hay judgments being due to him?

Answer to 6th question. As before stated, there was a good deal of conversation in regard to the different interests of the road. He did not, to my knowledge, claim and demand the amounts of the Hay judgments as being due to him, and to be paid to him by any contemplated organization. Reference was made to the Hay judgments, and that he held them under an assignment, representing about $5,000 or $7,000.

7th question. Were you present at a meeting at the office of Walter Lennox with any other parties to said contract? If yes, state when it took place, and who were present.

Answer to 7th question. I was present at the meeting held at the office of Walter Lennox. I cannot state the date positively. There were present J. Dean Smith, George W. Brent, Walter Lennox, R. T. Merrick, Ja's S. French, W'm Claughton, and myself. I think this meeting was held in the year 1868, my memory having been refreshed by a letter of Mr. Lennox calling said meeting.

8th question. Did Lennox claim at said meeting that Shoemaker had agreed to advance French $20,000 and Lennox $10,000, and did you and Dean Smith agree to it?

307 Answer to 8th question. The conversation at said meeting was opened by said Lennox, who spoke for some time; the full and minute particulars of which I cannot now detail. I am confident that no such demand was made by Lennox, and I am positive in the belief that Mr. Smith nor myself did not agree or assent to any such demand at said meeting.

9th question. Did French say anything at said meeting?

Answer to 9th question. My impression is that he did not say a word, and it was generally remarked after we left the room how very quiet Mr. French had been.

10th question. Was Walter Lennox satisfied with the said contract, and express himself anxious to carry it out?

Answer to question 10. He has always expressed himself to me as perfectly satisfied with it, and did so express himself at said meeting.

11th question. Examine Exhibit G. W. B., No. 7, filed in this cause, and state what it is, and whether it is a true copy.

Answer to 11th question. Exhibit G. W. B., No. 7, is a correct copy a meeting held at the office of Adams Express Company, under date of September 26th, 1868; it contains the proceedings and resolutions passed at said meeting.

12th question. Was a stockholders' meeting called, as contemplated by the proceedings referred to in Exhibit No. 7; and if yes, when was it called, by whom, and where held?

Answer to 12th question. There was a meeting called by Walter Lennox, I think, as secretary of the Alexandria & Washington R. R.

308 Co., to convene at the Mansion House, in Alexandria, on the 29th of October, 1868; and, as contemplated by the proceedings in Exhibit No. 7, the meeting was held.

13th question. Was Walter Lennox present at said stockholder's meeting, and did he participate and vote therein?

Answer to 13th question. Walter Lennox was present at said meeting and participated therein by voting as a stockholder, as well as acting as secretary of said meeting.

Cross-examined by James S. French:

1st question. State the exact time, or as near as you can, referred to in question 3, when you say French and Lennox called upon you; was it not before French signed the contract?

Answer. I think it was in 1867; it was before French signed the contract.

2d question. Referring to the 5th question, did you not tell French, on his signing the contract, it would be executed, and that his portion of the twenty per cent. would give him means to support his family, and that his services would be wanted in settling up the affairs of the A. & W. R. R. Co.?

Answer. I do not think that twenty per cent. was referred to between him and myself prior to its signing by him. It will filled up at that time and I have no recollection of saying that his services would be wanted in settling up the affairs of the A. & W. R. R.; may have done so in general conversation.

3d question. In reference to 11th question, state whether or no you and Phelps have returned the report of the value of the road and equipment, which you were by resolution required to make?

309 Answer. I think we have not.

4th question. State what interest you have in the Alexandria and Washington R. R., how acquired, and what consideration you paid for the same?

Answer. The interest which I may have in the Alexandria and Washington Railroad, how acquired, and the consideration for the same, is fully set forth in the agreement made and entered into, dated Dec'r 6th, 1867, and made an exhibit in this case.

5th question. State what amounts you have paid to R. T. Merrick, J. Dean Smith, or Geo. W. Brent for legal services in trying to sustain the lease, or in any way connected with the Washington, Alexandria, and Georgetown R. R. Co.?

Answer. I am unable to state correctly at this time the amounts paid to the gentlemen specified. Have paid them money from time to time as they required the same in connection with the different suits about said railroad. I also gave Mr. Brent two hundred and fifty dollars to visit Richmond in connection with securing his services relative to opposing a contemplated charter for a railroad from Alexandria to Georgetown, one hundred dollars of which I understand he gave to Mr. James S. French, to pay his expenses for aiding at Richmond in opposing said bill.

6th question. Why was not the agreement cancelled after French refused to sign it and Geo. W. Brent returned it to you? What disposition did you make of it?

Answer. I cannot say positively whether I retained it in my possession or returned to Mr. Lennox; neither do I understand what
310 is meant by cancelling it. I was under the impression that it was not binding upon any one without his signature. In this I may be in error, but still it was my impression.

7th question. Did you ever show the contract or give it to Lennox after French refused to sign it?

Answer. My impression is that Mr. Lennox did see the contract after Mr. French refused to sign it, but in this I am not positive.

Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in these causes, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?

Answer. I have not any recollection at the present time.

And further this deponent saith not.

OSCAR A. STEVENS.

IN CLERK'S OFFICE,
U. S. CIRCUIT COURT, DIST. VIRGINIA,
Richmond, March 7, 1870.

A true copy of depositions filed in suit of French vs. Shoemaker, depending in this court.

Teste: W. H. BARRY, *Clerk.*

311 59.—*Exhibit with Stevens dep'n.*

On this fourteenth day of November, A. D. 1868, before me, John F. Callan, a commissioner appointed by the gove'nor of Virginia for the district of Columbia, personally appeared Oscar A. Stevens, and made oath in due form of law, that, about the 1st of December, 1867, James S. French came to him in Washington, and informed him that the circuit court of Alexandria County, Virginia, had made a decree pronouncing the title of the Alexandria and Washington Railroad Company to be good, and that of the Washington, Alexandria, and Georgetown Railroad Company to be fraudulent and void, and requested affiant to procure for him from Samuel M. Shoemaker, of Baltimore, a

loan of five thousand dollars on condition that he, said French, would execute an agreement with Walter Lennox, who, with said French was the sole owner of the stock or property of said Alexandria and Washington Railroad Company, by which said Shoemaker was to be bound to pay the liabilities of said Company, and with other parties to said agreement to reorganize said company under said agreement, and also offered affiant to convey his, the said French's entire interest in and to said Alexandria and Washington Railroad Company to said Shoemaker to secure the repayment of said sum of
312 money, and as trustee for the parties to said agreement; affiant told said French that provided he would sign said agreement, which was then an affiant's possession and which he exhibited and read to said French, who carefully examined and read the same, and would convey his entire interest in said road to said Shoemaker as trustee for the parties thereto, as he had offered to do, and which conveyance or assignment was also carefully examined and read by said French, not only in the presence of this affiant, but also in the presence of Walter Lenox, and fully discussed, that he, affiant, would endeavor to induce said Shoemaker to advance him, said French, said sum of five thousand dollars. Affiant then advised said Shoemaker of the application and offer of said French, as described above and after some consideration and hesitation said Shoemaker agreed to advance said sum, but charged affiant to be careful to have said agreement executed and the conveyance of the interest of said French duly made and executed to him as trustee, before the money was paid him. Said French then signed and executed said agreement, and made a conveyance of his entire interest in said railroad to said Shoemaker, as trustee for the parties to said agreement, and placed said papers in affiant's hands to be deliv-
313 ered to said Shoemaker, upon his delivering to affiant said sum of five thousand dollars. Affiant then informed said Shoemaker that said French had executed said papers and placed them in affiant's hands, and said Shoemaker sent, by his counsel, the said sum of money to Washington; and said papers being examined by the said counsel and found correct, said sum of five thousand dollars was paid affiant for said French, and said agreement and conveyance delivered to said Shoemaker's counsel; affiant then paid said French said sum and took from him a receipt therefor, a copy of which is hereto annexed, marked "French's receipt.) Affiant further swears that said French fully understood that he was to convey his said entire interest to said Shoemaker as trustee for the parties to said agreement, and that such conveyance was in fact the moving consideration which induced affiant to urge said Shoemaker to advance said sum, and was the only inducement which could have moved him to urge said Shoemaker to advance it. This was the principal point discussed between affiant and said French when he applied to him for affiant's assistance.

OSCAR A. STEVENS.

Subscribed and sworn to before me at Washington D. C., this 14th day of Nov., 1868.

JOHN F. CALLAN,
Commissioner for Virginia.

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315 60.—*Exhibit with Stevens' dep'n.*

ALEXANDRIA, VA, *December* 7, 1867.

Received by the hands of O. A. Stevens the sum of three thousand dollars, and two notes for a thousand dollars each, payable four months after date, making five thousand dollars paid me on account of S. M. Shoemaker as set forth in an assignment and agreement dated Dec'r 6th, 1869, between myself, Walter Lenox, S. M. Shoemaker and others.

(Signed) JAMES S. FRENCH.

The whole paper being in his writing.

316 (Indorsed:) U. S. cir. c't, dist. Va. Samuel M. Shoemaker v. James S. French. French's receipt. Filed Nov. 30, 1868. W. H. Barry, clerk.

317 61.—*Deposition of C. W. Wattles.*

C. W. WATTLES having been first duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

1st question. State if you were present at any interview between Messrs. Ja's S. French, S. M. Shoemaker, and J. Dean Smith; and if yes, state when and what occurred.

Answer. Yes. I think it must have been early in the year 1867; the exact month I cannot recollect. The interview took place at the office of Brent & Wattles, on King street; the matter of discussion was in regard to a stipend to be paid Mr. French out of the earnings of the Alexandria and Washington Railroad. My recollection is, that $100 per month was named. Mr. French rejected the proposition with scorn, and said that it would not pay his liquor bills. The subject of the Hay judgments was then discussed. Mr. Shoemaker would not admit the validity of the claim. Dean Smith, who was sitting near me, turned and said, "He (Mr. French) desires us to pay for judgments which cost him nothing;" that is substantially all that I can recollect.

2d question. Look at Exhibit G. W. B., No. 1, and state at whose instance the endorsement was made.

Answer. I recollect all about this agreement; it is in my own handwriting. Some time in December, 1867—it must have been the 7th of December, 1867, Mr. French called at Brent and Wattles' office
318 on Prince street, next to the Gazette office, and spoke to Mr. Brent telling him that as the Shoemaker contract had been executed, he ought to doliver up this contract, Exhibit G. W. B., No. 1. This Mr. Brent declined to do, but said that he would put a suitable endorsement thereon; he asked me to get the contract, and in Mr. French's and my presence, he wrote the endorsement, and then read it to Mr. French.

3d question. Was French, at this time, the 7th of December, 1867, satisfied with his agreement with Shoemaker and others, and especially when he demanded of Brent the contract made between French, Lennox, and Brent?

Answer. My recollection is that he expressed no dissatisfaction, but that he said nothing more about it than that it had been executed.

C. W. WATTLES cross-examined by James S. French:

1st question. Mr. Wattles will please state whether or not he was present at the office of R. T. Merrick, in Washington City, when the

verbal agreement was made, or was he afterwards present when the verbal agreement was reduced to writing, and does he know of his own knowledge what occurred at either meeting?

Answer. Nothing in the world.

2d question. At the time of the conversation at your office, early in 1867, between French, Shoemaker, and J. Dean Smith, had French signed the contract of December 6th, 1867?

Answer. It could not have been signed at that time.

And further this deponent saith not.

C. W. WATTLES.

319 The further taking of these depositions is adjourned, by consent, till 10 o'clock in the morning of December the 11th, 1869, at the same place.

FRANCIS L. SMITH, JR.,
Examiner.

OFFICE OF FRANCIS L. SMITH, JR.,
Alexandria, Virginia, December 11th, 1869.

Present: George W. Brent, for Samuel M. Shoemaker, and James S. French.

At the request of Mr. French, the examiner states that on Monday, the 6th ulto., he (French) was at the examiner's office at the hours of 10 a. m., 12 m., and 5 p. m., and prepared for the examination of witnesses. The examiner also reports that Samuel M. Shoemaker was represented by his counsel, who were present on that day, between the hours of 10 a. m. and 5 p. m., and that in consequence of the non-attendance of any witnesses, the taking of the depositions was adjourned until the next day, as will be seen by the proceedings of the 6th ulto., and neither of the parties wishing to examine any other witness, this commission is closed.

FRANCIS L. SMITH, JR.,
Examiner.

STATE OF VIRGINIA, *Alexandria County, to wit:*

I, Francis L. Smith, jr., acting under the commission hereto annexed, as examiner, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me, at the times and place mentioned therein.

Given under my hand this 11th day of December, 1869.

FRANCIS L. SMITH, JR.,
Examiner.

Examination fee, $75—paid by Samuel M. Shoemaker.

FRANCIS L. SMITH.

320 IN CLERK'S OFFICE,
U. S. CIRCUIT COURT, DIST. VIRGINIA,
Richmond, March 7, 1870.

A true copy of depositions filed in suit of French vs. Shoemaker, depending in this court.

Teste: W. H. BARRY, *Clerk.*

321 62.—*Interrogatories.*

Interrogatories to be propounded by James S. French to Lawrence B. Taylor, Hiram O. Claughton, Walter Lenox, and James S. French, a witness in his own case, in the suit of Samuel M. Shoemaker, complainant, against James S. French, defendant, pending in the circuit court of the United States, fourth circuit, district of Virginia, and in which said suit James S. French has filed a cross-bill against the said Samuel M. Shoemaker.

Interrogatories addressed to Lawrence B. Taylor:

Ques. 1st. Have you or not any knowledge of a demand having been made by Samuel M. Shoemaker on James S. French for five thousand dollars loaned the said French by the said Shoemaker, and secured by an assignment of French's interest in the Alexandria and Washington Railroad? If so state it.

Ques. 2nd. State whether or not the said French made a tender to the said S. M. Shoemaker, or to his attorney, George W. Brent, of the five thousand dollars with interest demanded; and if so, whether or not he declined to accept the same.

Interrogatories addressed to H. O. Claughton:

The two interrogatories put to Lawrence B. Taylor to be repeated to H. O. Claughton, and also the following:

Ques. 1st. Did you or not ever attend a meeting with any of the parties to the agreement marked Exhibit B, in French's cross-bill vs. S. M. Shoemaker in this suit, in which said agreement was the subject of conference? If so, please state when and where, who were present, and what occurred at said meeting.

Ques. 2nd. State whether or not the said French and Walter Lenox, or either of them stated at said meeting that the chief inducement with them for making any agreement, was that Shoemaker agreed to make to the said French and Lenox, large advances upon their interests in the Alexandria and Washington Railroad; to the former about $20,000; to the about $10,000. If so, say whether said statement was then and there denied.

322 Ques. 3rd. Did or did not French demand in said meeting that the claims which he held against the Alexandria and Washington R. R. Co. should be paid by the said S. M. Shoemaker as agreed?

Ques. 4th. Did or did not French and Lenox manifest a disposition to have the agreement carried out, and was or was not that the object of the meeting?

Ques. 5th. What caused you to attend said meeting, and with what authority were you clothed, before you consented to attend?

Interrogatories to be propounded to Walter Lenox and James S. French—to each one separately:

To Walter Lenox.

Ques. 1st. State as far as you can all the circumstances which led you to make the Agreement B, made on exhibit by French in his cross-bill filed in this suit, and specially whether or no the said S. M. Shoemaker did agree, at the time, to make any specific advances to yourself and French; and if so, to what amount.

Ques. 2nd. State what was the main inducement which led you to

make the agreement referred to; and whether or no, without that inducement, you would have made it.

Ques. 3rd. Is it possible for you to be mistaken as to the fact whether or not the said S. M. Shoemaker did agree to advance to yourself and the said French, about the sums you have named, and that these advances were required by you, and agreed upon as preliminary to any agreement being made?

Ques. 4th. State when the meeting, above referred to, was held, and when Agreement B was prepared and signed by you; what persons were present at its preperation and signing, and why the specific advances which you state were to be made to yourself and French by the said Shoemaker, were not provided for in the agreement.

Ques. 5th. State what fiduciary relations Samuel M. Shoemaker, J. Dean Smith, and Oscar A. Stevens held to the Washington, Alexandria, and Georgetown R. R. Co. at the time of making said
323 agreement, and whether or not they made known the same to you and the said French; also whether or not you and the said French were authorised to speak of the terms of the agreement.

Ques. 6th. State whether or not, at the meeting first held by the parties to Agreement B, the affairs of the Alexandria and Washington R. R. Company were discussed, and did or did not said French then claim to be a creditor of said company to a large amount.

Ques. 7th. Did or did not said French, when the Agreement B was presented to him for his signature, admit that the same accorded with the verbal agreement he had made; or did he refuse to sign it, and point out to you wherein it did not? If so, state his objections and how far they accorded with the facts.

Ques. 8th. After French refused to sign Agreement B, were or were not threats made by any of the parties to it, that the contract should be enforced against him, and that by prolonged litigation he should be kept out of possession of the road if he did not sign it?

Ques. 9th. State the time when you and the other parties signed Agreement B, and how long after you and they signed it, was it before French signed it?

Ques. 10th. After French signed said agreement did you and he, or either of you, urge that said agreement should be carried out, and did you try to have it done?

Ques. 11th. Has said Shoemaker, to your knowledge, fulfilled, up to the present time, any of the conditions of said agreement; has he paid any of the debts of the Alexandria and Washington R. R. Co.? If so, name them.

Ques. 12th. Was or was not said Shoemaker informed by said French, before French signed Agreement B, that he was the owner of and held large claims against the Alexandria and Washington R. R. Co.?

Ques. 13th. State whether or not French, when working the said road, appropriated to his own use any of the earnings of the road; did he make any charge for his services as president, or in any capacity whatever, and did he or did he not frequently advance his pri-
324 vate means to supply the wants of the R. R. Co.?

Ques. 14th. State whether or not the said Shoemaker and the other parties to the agreement, since the signing of said Agreement B, have in good faith, at all times, sought to uphold and establish the rights of the Alexandria and Washington R. R. Co.

Ques. 15th. Were you or were you not consulted by the said Shoemaker when he lately applied to Congress to grant to himself, and other parties to Agreement B, a charter for a railroad in the District of

Columbia, with power to condemn and purchase for their own use, that portion of the Alexandria and Washington R. R. lying within the city of Washington, and were you or were you not a party to the same?

Ques. 16th. State whether or not the lease held by Stevens and Phelps from the W. A. & G. R. R. Co., was under Agreement B, to be assigned to and held by the parties to said agreement for their mutual benefit; whether or not you have ever derived any benefit from it, and whether or not, if said parties should now seek to execute said agreement, they could assign over to said parties their lease as agreed?

Ques. 17th. State what was the consideration which induced you and the said French to assign over to the said Stevens and Phelps, J. Dean Smith, and R. F. Merrick the amount of stock they now claim to hold under Agreement B, and how far they have rendered you any equivalent for the same.

Ques. 18th. State what were the powers conferred on George W. Brent by yourself and French when you employed him as your counsel to bring suit for the recovery of the A. & W. R. R. Did or did not you and the said French create the said Brent an agent and trustee of said R. R. Company, and put into his hands the seal and record book of said company, to hold and use as such trustee or agent?

325 Ques. 19th. The original bill, filed in this case by S. M. Shoemaker against said French, had been prepared, and was sworn to by the said Shoemaker on the 26th day of October, 1868; a copy of it was served on said French, October the 28th, 1868, and a meeting was held at the Mansion House, in Alexandria, by the parties to Agreement B, on the next day, October the 29th, '68, and at which meeting, French, the president of the A. & W. R. R. Co., and the old directors of said company were turned out, and Shoemaker elected president, and other parties to Agreement B, directors. State whether or not you were then, or before that time had been, informed that said bill of injunction had been prepared, and a copy of it had then been served on said French, or were these facts withheld from you?

Ques. 20th. State whether or not since the meeting above referred to, or at any time, you have received any benefits under Agreement B; if so, name them. State how much, if any, of the twenty per cent. of the earnings of the road, reserved in the Agreement B, you have received on your stock, and whether or not you have been consulted or advised with in reference to the affairs of the road by any of the parties to Agreement B, or treated by them as a partner in the same.

Ques. 21st. Shoemaker charges in his original bill against French that he purchased your entire interest in the Alexandria and Washington Railroad, and that you have conveyed all your interest in said railroad company's road and property to him by deed, a copy of which deed he makes an exhibit, marked S. M. S., No. 2. Was this or not an absolute sale by you? If not, state the circumstances which led you to make the conveyance, and which show that it was neither intended by you nor received by Shoemaker as an absolute conveyance.

326 Ques. 22nd. State whether or not French is a creditor of the Alexandria & Washington R. R. Co.; if so, to what amount, and whether or not the same was known to the said S. M. Shoemaker before Agreement B was executed.

Ques. 23rd. State whether not Oscar A. Stevens and W. Jackson Phelps, by R. T. Merrick, their counsel, all parties to Agreement B, did, after said agreement was executed, file their answer in the suit of the Alexandria and Washington R. R. Co. vs. The Washington, Alexan-

dria & Georgetown R. R. Co. & others, in which they set up the validity of the new company, & pray that French's suit for the recovery of the A. & W. R. R. may be dismissed; if so, state when said answer was filed, and when you had knowledge of the fact.

SAMUEL M. SHOEMAKER, Esqr.:

You will take notice that the interrogatories of which the above are true copies, have been filed by me, in the clerk's office of the circuit court of the United States, fourth circuit, district of Virginia, and you are hereby notified to file cross-interrogatories to the same, should you so desire, in ten days from the service hereof.

Respectfully, &c., &c.,

JAMES S. FRENCH.

The above notice & interrogatories this day served on me.

GEORGE WM. BRENT,
Att'y for S. M. Shoemaker.

ALEXANDRIA, *Octo. 25th*, 1869.

327 Francis L. Smith, jr., esq., is hereby appointed special commissioner to take the depositions & answers to the interrogatories of the witnesses above mentioned in this case.

November 9, 1869.

JOHN C. UNDERWOOD,
Dist. Judge.

ALEXANDRIA, VA., *November 17th*, 1869.

To the Honorable John C. Underwood, judge of the United States district court for the State of Virginia:

In accordance with the notice and commission hereunto annexed, I have taken the answers under oath of the witnesses James S. French, H. O. Claughton, and L. B. Taylor, to the several interrogatories propounded to them, and return the same herewith.

FRANCIS L. SMITH, JR.,
Special Commissioner.

Commissioner's fee, $20.

328 Interrogatories addressed to Lawrence B. Taylor:

Ques. 1st. Have you or not any knowledge of a demand having been made by Samuel M. Shoemaker on James S. French for five thousand dollars loaned the said French by the said Shoemaker, and secured by an assignment of French's interest in the Alexandria & Washington Railroad; if so, state it?

Ques. 2nd. State whether or not the said French made a tender to the said S. M. Shoemaker or to his attorney, George W. Brent, of the five thousand dollars with interest demanded; and if so, whether or not he declined to accept the same.

(Indorsed:) L. B. Taylor.

329 63.—*Answers to interrogatories.*

Answers of Lawrence B. Taylor to the interrogatories filed by James S. French, in the suit depending in the circuit court of the United States, fourth circuit, district of Virginia, in which Samuel M. Shoemaker is plaintiff and the said James S. French is defendant.

Answer to 1st interrogatory. On or about the 10th day of October, 1868, I and H. O. Claughton, esq., counsel of the said James S. French, called upon George W. Brent, esq., counsel for the complainant, Samuel M. Shoemaker, and made a tender to him of five thousand dollars, payment of which had been demanded by said Shoemaker with interest thereon, to that date, the amount secured to the said Shoemaker by a certain mortgage deed, or assignment of certain property therein mentioned, from me to him, dated December 6th, 1867, and demanded a reconveyance & release of the said property. Mr. Brent as counsel for Shoemaker, recognized the tender as legal, and was willing to receive the money, and to reconvey a portion of the property mentioned and described in the said mortgage or assignment; (all, as said Brent contended, to which French was entitled,) but we, as counsel for French, demanded a reconveyance of all the property conveyed by him, inasmuch as we were prepared and ready to pay the whole amount & interest secured by the deed. This Mr. Brent would not agree to, and refused to receive the money thus tendered to him.

The answer to the 2nd interrogatory is contained in the fore-
330 going answer to the first.

LAWRENCE B. TAYLOR.

STATE OF VIRGINIA,
County of Alexandria, sc.:

I, Francis L. Smith, jr., a notary public for the county aforesaid, in the State of Virginia, do certify that Lawrence B. Taylor whose name is signed to the foregoing answers, this day personally appeared before me in the county aforesaid, and made oath that the facts by him therein stated and set forth are true.

Given under my hand this 17th day of November, 1869.

FRANCIS L. SMITH, JR.,
Notary Public & Special Commissioner.

331 64.—*Answers.*

Answers of H. O. Claughton to the interrogatories filed by James S. French, in the suit depending in the circuit court of the United States, of Virginia, in which S. M. Shoemaker is *is* plaintiff and James S. French is defendant.

Answer to 1st interrogatory. I have some knowledge that a demand was made by S. M. Shoemaker on James S. French for the five thousand dollars loaned to said French by the said Shoemaker and secured by mortgage of said French's interest in the Alexandria & Washington Railroad. A demand for payment, in writing, was served upon James S. French.

Answer to 2nd interrogatory. James S. French, through Mr. L. B. Taylor & myself, acting as his attorneys, made a tender of the five thousand dollars to George W. Brent, the attorney of S. M. Shoemaker. The said Brent was willing to receive the money and convey to James S. French a certain amount of the stock in said railroad. The attorneys of James S. French required that the said Shoemaker should reconvey to the

said French all that French had mortgaged to him. The said Brent, as attorney for Shoemaker, refused to accept the tender of five thousand dollars so made.

Answer to interrogatory 3. I did attend a meeting at the office of Mr. Walter Lennox, in Washington, at which there were present, George W. Brent, R. T. Merrick, J. Dean Smith, Oscar A. Stevens, Jas. S. French and Walter Lennox, at which meeting the agreement alluded to was the subject of conference. The said French and Lennox claimed
that there was an understanding that they were each to receive
332 a considerable sum of money as a part of the consideration for
entering into the agreement by them.

Answer to interrogatory 4th. James S. French and Walter Lennox did state at the meeting that the advances to be made to them respectively was a leading inducement with them in making the said agreement. I do not recollect that the exact amount of these advances was definitely stated or agreed by either J. Dean Smith or Oscar A. Stevens. I think the latter admitted that there was an understanding between Shoemaker, of the one part, and French and Lennox of the other part, that Shoemaker should make advances to the said Lennox and French; but maintained that such advances were outside of the agreement & no part thereof.

Answer to interrogatory 5. James S. French did demand that the claims he held against the Alexandria & Washington Railroad Company should be paid by Shoemaker as provided in the said agreement.

Answer to interrogatory 6. French and Lennox did manifest a disposition to have the agreement carried out as claimed by them, and the meeting was held for the purpose of fixing upon some definite arrangement or understanding with that view.

Answer to interrogatory 7. James S. French employed me to attend the meeting as his counsel. Walter Lennox, at whose office this meeting was held, requested me to attend the meeting. He stated to me that he had proposed to some of the parties that they should be represented by J. H. Bradley, sr., and French and himself by me,
333 and that the proposition was declined, but that he desired me to
attend notwithstanding. Mr. French was much excited in reference to the matter; declared himself to be entirely without professional assistance and appealed to me in the strongest terms to assist him. I, after some hesitation, consented to do so, upon two conditions. 1st. That he would give me a power of attorney to represent him and act for him according to my judgment, and pledging himself to ratify my action in the premises. 2d. That nothing which might be done should in any manner prejudice the rights of George W. Brent. With this understanding, & with such full power of attorney, I attended the meeting. I understood the meeting to be adjourned for the purpose of affording J. Dean Smith an opportunity of ascertaining the views of S. M. Shoemaker as to the payment of the advances claimed by James S. French and Walter Lennox, to be reported at a future meeting of the parties.

H. O. CLAUGHTON.

334 65.—*Interrogatories.*

The foregoing interrogatories submitted to Walter Lennox being repeated to James S. French, the said French makes to them the following answers:

Ans. to ques. 1. In March, 1866, I, as president of the Alexandria

& Washington Railroad Company, brought suit in the criminal court for Alexandria County to recover possession of the road from the parties who illegally held it. Walter Lennox & myself were the sole owners of the road; I owned three-fourths and Lennox one-fourth; and to bring the suit, we employed as our counsel, George W. Brent, of Alexandria, and paid him a retaining fee. I was living at the time in Southwestern Virginia, and on my coming to Alexandria in November, 1866, to attend the fall term of the court, I was informed by my counsel, George W. Brent, that a meeting had been arranged to be held in Washington City, between Lennox and myself, and Samuel M. Shoemaker, J. Dean Smith, Oscar A. Stevens, & W. Jackson Phelps, to see if we could not make some agreement to advance our interests and promote a speedy settlement of our railroad suit. Brent represented Shoemaker to be the agent or superintendent of the Adams Express Company; as having large means and able to carry out any agreement he would make; that he was the capitalist who would furnish the required means, if we could make a satisfactory contract. Brent urged me to get Lenox and attend the meeting, and at my request gave me a letter expressing the utmost confidence in the success of the suit for the recovery of the road. I called upon Lenox in Washington, told him what Brent had stated, and had with Lenox a full conference as to
335 my pecuniary condition, and the affairs of the railroad. I was entirely destitute of means to supply even the necessaries of life, and had a large family to support, whom by manual labor I had taken care of the greater part of the war, and Lenox was very much in want, and we determined to attend the meeting, but to make no agreement which did not supply our immediate wants, and relieve us from the harrassing cares which surrounded us. I required there should be advanced to me $25,000, & Lenox, $10,000. We then attended the meeting at the house of R. T. Merrick, where we met said Merrick, Samuel M. Shoemaker, J. Dean Smith, Oscar A. Stevens, & W. Jackson Phelps. They were all strangers to me but Shoemaker, whom I had known slightly some twenty years before. At this meeting before entering upon the discussion of the subject we had met to consider, Lenox held a conversation with Shoemaker, and stated to him our condition, and the advances we required him to make as preliminary to any agreement. After this, Lenox came over to where I was sitting in another part of the room, and told me if we could make a satisfactory agreement, that Shoemaker would make the advances, but I think stated that he had told Shoemaker that the sum required by me could be reduced to $20,000. After telling me what had occurred between Shoemaker & himself, he said "Go and see him and understand for yourself." I at once went up to Shoemaker, referred to Lenox's statement to me, and told him the advances must be made, if we made any agreement; that it was a matter of necessity. My conversation with Shoemaker left on my mind no doubt whatever but that the advances would be made as Lenox had stated, if we could agree on the
336 terms of settlement. The exact words used by Shoemaker I do not remember, but he confirmed the statement Lenox had made to me and I felt that the required advances would be no barrier to our making an agreement. When I left Shoemaker, he said to me, "See Dean Smith." I went at once to Smith, told him what Shoemaker had said, & that he had requested me to see him. Dean Smith confirmed the impression Shoemaker had made, and said there would be no difficulty about the advances if we could make an agreement. I left Smith perfectly satisfied from what Shoemaker had said to me, and what

Smith had said, that the required advances on our interest in the road would be no obstacle, if we could make an agreement. After this preliminary matter was settled I entered into a full discussion of the affairs of the Alex. & Wash. R. R. Co. Its title I regarded as valid, which appeared to be conceded by all present. I discussed the indebtedness of the company, specifying the claims I held against the company; the debt due the city of Washington, & the importance of settling it; and the value of the road, &c., &c. And we entered into a verbal agreement which was to be reduced to writing, and signed as soon as practicable, and we adjourned, it being enjoined on Lenox and myself that the agreement should be regarded as strictly confidential.

Ans. to ques. 2. The main inducement was my impoverished condition and the imperative demands of my family, the necessity there was for supplying their wants, and unless the agreement promised to relieve me in this respect, I certainly should not have made it.
337 I refused even to discuss the object of the meeting, or any terms of agreement, until the preliminary matter of the advances was settled and agreed to by Shoemaker.

Ans. to ques. 3. It is not; I was wholly destitute of means, and my only hope of raising money was on my interest in the road. Shoemaker was represented to me as the capitalist who would furnish the means to carry out the agreement, if we should make one. It was for this reason I conferred with him on the subject of the advances, and Lenox and myself had both agreed before attending the meeting to enter into no agreement whatever which did not relieve our necessities.

Ans. to ques. 4. The meeting was held in November, 1866; and a day or two after I arrived in Alexandria to attend the fall term of the court. When Agreement B was prepared I do not know; I was called suddenly home from court, the agreement was prepared in my absence, and presented to me for my signature on my return to Alexandria, about the last of January or early in February, 1867; it was then signed by Samuel M. Shoemaker, J Dean Smith, Oscar A. Stevens, & George W. Brent, & Walter Lenox. It was signed by me December the 6th, 1867, nearly a year after it had been prepared. Not being present when the contract was prepared and signed by the other parties, I cannot answer the remainder of the question.

Ans. to ques. 5. At the time of the meeting above referred to, Samuel M. Shoemaker, J. Dean Smith, and Oscar A. Stevens, were directors in the Washington, Alexandria, & Georgetown R. R. Co.; S. M. Shoe-
338 maker was also treasurer of said company, & J. Dean Smith was the attorney of said company, and was vested with full power to settle or compromise the suit brought by "a certain James S. French," to recover the Alexandria & Washington R. R., and was also empowered to settle for the Washington, Alexandria, & Georgetown R. R. Co. the debt due the city of Washington by the A. & W. R. R. Co. In confirmation of these facts, see a copy of the proceedings of the directors of the Washington, Alexandria, and Georgetown R. R. Co., held on the 14th August, 1866, herewith made an exhibit, marked J. S. F., No. 1, and the answer of J. Dean Smith and Oscar A. Stevens, filed November 28th, 1866, in the suit of the Washington, Alexandria, & Georgetown R. R. Co., ats. Joseph Davidson, in the circuit court for the county of Alexandria, a copy of which is herewith made an exhibit, marked J. S. F., No. 2. This answer was filed in a very few days after the meeting referred to. The facts above stated were unknown to me. I was not authorized to speak of the agreement, but was enjoined to keep it secret by these parties. I told George W. Brent the result of the

meeting, as he had sent me to it, but regarded it with others as confidential.

Ans. to ques. 6. The affairs of the A. & W. R. R. Co. were fully discussed, and especially the indebtedness of said company. I then and there stated I was a creditor of said company to a large amount for advances I had made individually in purchasing and settling debts against the company, and was the owner of the claims and judgments against the company which had been assigned to Hay, but which he had assigned to me.

339 Ans. to ques. 7. The Agreement B was presented to me for my signature by George W. Brent, and strongly urged by him that I should sign it before I had even examined it or read it over. As soon as I had done so, I refused to sign it, because it was not the agreement I had made, but differed from it in many particulars, which I pointed out. There was no provision in it for the specific advances which Shoemaker had agreed to make to Lenox and myself, and which was the main inducement with me for making the agreement I did. There was no provision in it requiring Shoemaker to furnish all the money required for carrying on the litigation necessary to establish the title of the A. & W. R. R. Co., which he had agreed to do. There was no provision requiring J. Dean Smith, R. T. Merrick, & George W. Brent to render their professional services in establishing the title of the A. & W. R. R. Co. for the stock agreed to be assigned them, two hundred shares each, which was the only consideration for agreeing to assign them any; and besides Merrick's two hundred shares had been added to the portion of Stevens & Phelps, making their portion 850 shares in place of 650 shares, which Lenox and myself had agreed to assign them, while Merrick's name did not appear to the agreement, which much dissatisfied me. Also because there was a clause in the agreement making Stevens and Phelps, the one superintendent, the other manager of the company, at a salary of $250 a month each, without even being subject to removal by the directors, who, at most, could only regulate their salaries, and these parties control'ing a majority of the stock,

340 thus became permanent fixtures, when at the time the meeting was held, and the verbal agreement made, there was not the slightest intimation given that any such appointments were to be made, and I never heard of it until I saw their appointment in the agreement. Besides this, a provision had been inserted in the agreement to reserve a certain percentage of the earnings of the road, which were to be distributed among the stockholders pro rata according to their stock, but the amount was left blank, to be filled as they might agree, after I had signed it. For these and other differences between the agreement I had made and the one presented to me for my signature, I refused to sign it, stated my objections, and at once sought an interview with Lenox and remonstrated with him for his having signed it. The agreement, though signed by the parties I have mentioned, was not dated.

Ans. to ques. 8. I refused to sign the agreement, and to avoid trouble tried to get Shoemaker and Smith, and other of the parties, to carry out the terms Lenox and myself had agreed upon. Lenox & myself had with them various meetings for that purpose, but the contract had been signed by him, and they insisted upon it against me—would not give it up, and I understood it was to be enforced against me.

Ans. to ques. 9. The exact date when the agreement was signed by the other parties, I don't know. They had signed it (with the exception of Phelps) before it was presented to me in January or February, 1867,

for my signature. I did not sign it until December the 6th, 1867, about a year afterwards.

341 Ans. to ques. 10. I signed the agreement on the condition it would at once be carried out; and Oscar A. Stevens, who, acting for Shoemaker, paid me the $5,000 I borrowed, urged me to go at once home and move my family to Alexandria, as my services would be at once required. This I did, & sought to have the agreement carried out in every way I could, but by frivolous pretexts was put off from day to day. This was the more necessary because I had been induced to remove my family to Alexandria, and relied upon my interest in the road to support them. The parties having agreed to meet in Washington, I applied to H. O. Claughton, and told him I should like to employ him as my counsel to attend said meeting, and see if it was possible to effect any fair settlement. He objected at first because he said George W. Brent was a brother lawyer, and might regard his attendance as officious. I told him I wished him to attend and try to make an amicable settlement. I was disposed to do what any honorable man would say was right. He said if I would empower him to settle it for me, he would attend; this was in substance what occurred between Claughton and myself. I made to him a power of attorney, with full power to settle for me in any manner that he should deem proper, and with this authority he attended the meeting, but could effect nothing.

Ans. to ques. 11. He has not. I purchased when I was building the road, a small lot or lots in Alexandria, over a part of which I laid

342 the track, and paid a part of the price. A judgment was obtained by George W. Brent, counsel for Mrs. Lippit, who owned the lots, against the Alexandria & Washington R. R. Co., and it was necessary the judgment should be paid or the working of the road stopped. I find the property was purchased by Samuel M. Shoemaker and a deed made to him individually. There is not a word in the deed to show that Shoemaker holds it for the benefit of the Alexandria & Washington R. R. Co., or for the benefit of the parties to Agreement B. This is the only debt I have ever heard he pretended to have paid.

Ans. to ques. 12. Yes, again & again. He was told of them when the first meeting was held. He was told of them in the various meetings Lenox & I had with him, Smith, & others to get them to give up the contract or carry out the agreement. I do not think there was a meeting in which my claims against the company were not the subject of discussion.

Ans. to ques. 13. I never made a charge for any service I rendered, either as president or otherwise, or received any compensation, or appropriated to myself any part of the earnings of the road; but, on the contrary, was often compelled to use what means I could raise, personally, to aid the road.

Ans to ques. 14. They have not. I signed Agreement B, December the 6th, 1867. February 6th, 1868, just sixty days afterwards, Stevens and Phelps filed their answer, by R. T. Merrick, their counsel, in the

343 suit of The A. & W. R. R. Co. vs. The W., A., & G. R. R. Co. & others, in which they asserted their interest in said company, and prayed the court to dismiss my bill seeking to establish the A. & W. R. R. Co. I knew nothing of this until many months afterwards. In August, 1868, a bill was filed in the district court of the United States by Samuel M. Shoemaker, superintendent of Adams Express Company, sworn to by said Shoemaker, and was also signed by J. Dean Smith, counsel for complainants, against Joseph Davison, Wm. Hellenburg, & others. In this bill the said Shoemaker and said Smith set up the val-

idity of the W., A., & G. R. R. Co., and seek to destroy the A. & W. R. R. Co., and in the 11th section of said bill refer to a suit brought by Horatio G. Riddle & others vs. James S. French to enjoin him from even asserting that there was such a company as the Alexandria & Washington R. R. Co., or acknowledging its existence in any way, and declare that said suit "is but a supplement and auxiliary" to the suit brought by Riddle & others, now pending in this court. As president of the Alexandria & Washington R. R. Co., I obtained, on the 28th of August, 1868, a final decree in the circuit court for Alexandria County, restoring the road to said company. I gave bond, as required, in the sum of $50,000, sued out an execution, and was placed in possession of the road by the sheriff of the county. As soon as I did this, I was compelled by Shoemaker, aided by other parties to Agreement B,
344 to give up the road to Stevens & Phelps, as receivers, after they had just been ousted as lessees of the W., A., & G. R. R. Co. I have tried to have a suit instituted in the District of Columbia for the recovery of that part of the A. & W. R. R. laying there, but could not induce Shoemaker or the other parties to aid me, and have lately done so at my own expense. These facts show that these parties have entirely disregarded their obligations, and have actually upheld & supported the W., A. & G. R. R. Co.

Ans. to ques. 15. I was not. The first intimation I had of any such purpose was from the newspapers, and I never afterwards was informed that I had any interest in the matter. None of the parties treated me as at all interested in the matter. I was never consulted or advised with, nor was I a party to the same.

Ans. to ques. 16. The lease was to be assigned to and held for the mutual benefit of the parties to Agreement B. I have never derived any benefit from it, and now it is impossible to assign it, because, on the 2d of July, 1868, the lease was vacated and declared void by the highest appellate tribunal in Virginia, from which no appeal lies, a copy of which decree is herewith made an exhibit, marked J. S. F., No. 3; and before that time the lease was vacated & declared void in the District of Columbia. The parties have never superseded this decree, & it remains in full force, a receiver being appointed under it.

Ans. to ques. 17. The sole and only reason why any stock was
345 agreed to be assigned to Stevens & Phelps was that they agreed to assign over to the parties to the agreement their lease, which, I was assured by the parties at the first meeting, could be & would be maintained against the W., A., & G. R. R. Co. Of the benefits of this lease we were all to partake, Stevens & Phelps having possession of the road under it. The sole and only consideration why Lenox & myself agreed to assign J. Dean Smith and R. T. Merrick 200 shares of stock each was, that they agreed to devote their professional services to the establishment of the title of the A. & W. R. R. Co., and to protect said company in the litigation in which it was then, or might be, involved. None of these parties have rendered any equivalent whatever, and would not when they could. Stevens & Phelps would not assign their lease when they could, and now have none to assign. Smith & Merrick have each acted as counsel in sustaining the new company, & against the A. & W. R. R. Co.

Ans. to ques. 18. Simply those of an ordinary attorney, and none other. I never appointed him agent or trustee of said company; never put into his hands the seal and record-book of said company to hold as said trustee or agent; never divested myself of the right to employ what counsel I pleased, or as many as I pleased—the contrary

supposition is absurd. I employed Brent, with the consent of Lenox, about a year before Agreement B was ever thought of, and it
346 never was thought of until urged by Brent himself. It would have required foreknowledge on my part to have invested Brent with the powers claimed by Shoemaker to have been conferred on him at that time; it would have required me to have foreknown that Agreement B was thereafter to be made with persons of whose existence I did not know. Happening to use the seal at the office of Brent & Wattles, where I carried it for that purpose, it being then my property and in my possession, I placed it, after using it, on the top shelf of Brent's library and asked him to take care of it, as I was then about to return to Southwestern Virginia, and also placed in his safe certain valuable papers, which he took care of & returned to me. I never asked for the seal until I saw the bill of Shoemaker, claiming that I had made Geo. W. Brent my trustee & agent, & left the seal with him for that purpose. I applied to Geo. W. Brent for the seal, on seeing this charge in Shoemaker's bill, who refused to give up the seal. I then called a meeting of the directors of the A. & W. R. R. Co., who passed a resolution requiring Brent to give up the seal, and dispensing with his services as counsel. This was the way in which George W. Brent got possession of the seal, and, having it, now holds it.

Ans. to ques. 19th. The bill had been prepared, and was sworn to by S. M. Shoemaker, October 26th, 1868; a copy of it was served on me Octo. 28th, 1868, and a meeting of these parties was held at the Mansion House, in Alexandria, on the 29th of October, 1868. I was not present, but the newspapers informed me that I was turned out as president of the A. & W. R. R, Co., and the old directors, & that Samuel M. Shoemaker was elected president in my place, & the parties to
347 Agreemement B. directors. I never heard of the injunction until a copy was served on me, requiring me to appear before Judge Underwood, in Richmond, sometime about the middle of November following.

Ans. to ques. 20. I have not. I have never received anything, and have never been consulted or advised with, or treated as a partner.

Ans. to ques. 21. I borrowed of S. M. Shoemaker $5,000, and secured the same by a mortgage on my stock in the R. R., upon the most solemn pledge from O. A. Stevens, who as Shoemaker's agent, paid the $5,000 partly in money and partly in notes, that if I wou d sign the contract it would be at once executed; that I should at once be free from all trouble. He spoke of my proportion of the 20 per cent., which it was agreed the blank should be filled with; stated I should be well provided for, for my services would be required in settling up the debts of the A. & W. R. R. Co., and urged me to go at once home & remove my family to Alexandria. My necessities compelled me to sign the agreement, which they still held over me, with threats to enforce it, and I did not doubt, from the representations made me, would be at once executed. The assignment was brought by Stevens, ready prepared, when he paid over the $5,000. I supposed it was what I had agreed to, a mere mortgage to secure the amount borrowed, & so regarded it when I signed it.

Ans. to ques. 22. I am a creditor of the Alexandria and Washington Railroad to an amount exceeding $50,000; and while some of the
348 claims making up this amount were purchased by me of Alexander Hay, to whom they had been assigned, a large portion of them were paid by me individually; and these claims Shoemaker was informed of before Agreement B was executed, and they are matters of record.

Ans. to ques. 23. They did; said answer was filed February 6th, 1868, and I never knew of it until the record was printed in the district court of appeals, some nine or ten months after it was filed.

JAMES S. FRENCH.

349 (Indorsed:) French vs. Shoemaker. Depositions.

350 66.—*Meeting board directors.*

EXHIBIT.

OFFICE OF THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN RAILROAD COMPANY,
Washington, D. C., 14th August, 1866.

At a special meeting of the board of directors of the Washington, Alexandria, and Georgetown Railroad Company, held at the office of the company, corner of 9th street and Maryland avenue, Washington, D. C., on the 14th day of August, A. D. 1866, pursuant to notice, of which the following is a copy:

"WASHINGTON, D. C., *August 13th*, 1866.

"JOS. B. STEWART, Esq.,
"*Sec'y W., A., & G. R. R. Co., Washington, D. C.*

"SIR: There will be a meeting of the board of directors of the Washington, Alexandria, and Georgetown Railroad Company, held at the office of the company in Maryland avenue, on Tuesday, August 14th, at 12 o'clock, m.

"Matters of importance to the company will come before the board for consideration, and you are respectfully requested to be present.

"By order of S. M. Shoemaker, J. Dean Smith, and O. A. Stevens, directors.

"JOHN STONE,
"*Recording Secretary & Book-keeper,*
"*W., A., & G. R. R. Co.*"

Present, Samuel M. Shoemaker, J. D. Smith, and O. A. Stevens.

351 On motion, Samuel M. Shoemaker was appointed president pro tem., and Oscar A. Stevens secretary pro tem.

The recording clerk and book-keeper of the company, John Stone, esq., reported that he had placed in the hands of the secretary, Joseph B. Stewart, esq., the letter from Messrs. Shoemaker and Smith, requesting the call of a special meeting of the board of directors on the 13th of August, A. D. 1866, and had received in reply a letter from him saying that he was compelled to be absent from the city for a few days, and that there would be no meeting on the 13th inst.

On motion, the letter was ordered to be placed among the proceedings of the meeting, and is as follows:

"WASHINGTON, *August 11th*, 1866.

"JOHN STONE, Esq.

"DEAR SIR: As important matters compel me to leave the city for a few days, there will be no meeting of the board of directors on the 13th inst. I have sent a note to Messrs. Smith and Shoemaker, informing them of the fact.

"There will be a meeting of the board on my return.

"Respectfully,
(Signed) "JOS. B. STEWART."

J. Dean Smith, esq., stated to the meeting that he had been re-
352 quested and instructed to apply to the board of directors of this company for a transfer of stock on the part of the "National Exchange Bank of Baltimore." Whereupon,

On motion of O. A. Stevens, it was ordered that,

Whereas the National Exchange Bank of Baltimore is the holder of three certificates of the capital stock of this company, one, No. 32, for five hundred shares, dated the 30th day of August, 1865, issued to Leonard Huyck, and by a power of attorney, thereon indorsed by him, transferred to Daniel Miller, one, No. 33, for 250 shares, dated the 30th day of August, 1865, issued to said Huyck, and similarly transferred to Daniel Miller, and one, No. 34, for 250 shares, dated the 30th day of August, 1865, issued to said Huyck, and by him similarly transferred to said Daniel Miller; and whereas said bank has requested and instructed this company to transfer said stock to Daniel Miller, and to issue to him new certificates therefor, and whereas the secretary of this company is now absent, and the stock-book of this company is in his hands, and not accessible—

Now, therefore, it is

Resolved, That R. W. Latham, the president; Jos. B. Stewart, the secretary of this company; and Samuel M. Shoemaker, its treasurer, are hereby instructed to issue to said Daniel Miller new certificates for
353 said stock, under the directions of the attorney of said bank, and to cancel the said outstanding certificates therefor when the same are issued; and it is further

Resolved, That in the mean time, and until said new certificates are issued, and said certificates now outstanding are cancelled, that said Daniel Miller be, and he is hereby declared to be, entitled to all the powers, authority, and privileges of a stockholder in this company, according to the number of shares for which said certificates were issued, to all intents and purposes as if said stock had been regularly transferred upon the stock-books of this company, and new certificates had been regularly issued to said Daniel Miller therefor.

On motion, it was also further ordered by the board of directors that

Whereas, there is now pending in the circuit court for Alexandria County, Virginia, a suit in equity brought by a certain James S. French against this company, it is hereby

Resolved, That J. Dean Smith, a member of this board, be, and he is hereby, empowered to appear in said suit on behalf of this company, and to conduct such suit, or to settle or compromise the same in his discretion, and according to his judgment, as the solicitor or attorney of the company; and

354 Whereas Leonard Huyck, the late treasurer of this company, appears by its books to be a debtor for money placed in his hands as treasurer, it is hereby

Resolved, That J. Dean Smith, a member of this board, is hereby empowered and instructed, as the solicitor and attorney of this company, to take such steps or institute such proceedings as he may deem most proper to recover the amount due by said Huyck to this company; and

Whereas this board is informed that Leonard Huyck, the late treasurer of this company, while in possession of the stock-book of this company, did issue certificates purporting to be certificates of the stock of this company to a large amount without returning and cancelling the outstanding certificates, to replace which said certificates were said to be issued, or did otherwise abuse the confidence and trust reposed in

him as its treasurer in the over-issue of certificates purporting to be certificates of its stock; and whereas said pretended and fradulently-issued stock is said to have been signed by the president and secretary of this company, and it is hereby

Resolved, That R. W. Latham, J. Dean Smith, and O. A. Stevens, three members of this board, are hereby instructed, authorized, and empowered to examine the stock and other books of this company,
355 and to take any other means which, in their judgment, may be proper, in order to ascertain the number of shares, purporting to be shares of its stock, which by said certificates are purported to be issued by said Huyck, or any other person, and for this purpose they are empowered and authorized to take possession of the stock and other books of this company, and to report to this board at as early a day as may be practicable the results of such examination.

And it is further resolved, That said J. Dean Smith, as attorney of this company, is empowered, authorized, and instructed to take such legal steps as he may deem proper to prosecute said Huyck for his aforesaid fraudulent acts as its treasurer, and to recover from him such damages as this company may have suffered, or may hereafter suffer in consequence thereof. And—

Whereas this board is informed that a certain D. Randolph Martin, of the city of New York, claims to be a creditor of this company to a large amount, and to hold, as collateral security therefor, its bonds; and whereas the reports of this company show a large amount of its bonds to be still on its hands not negotiated, and no authority has been given to any one on its behalf to pledge said bonds in any way, it is hereby

Resolved, That J. Dean Smith is empowered, authorized, and
356 instructed to examine into the claim of said Martin, and to take such steps as, in his judgment, will best protect the interests of this company in regard thereto, and to ascertain and fix the amount, if any, really due said Martin by this company, and recover said bonds; and

Whereas the corporation of the city of Washington claim to be a creditor of this company to a large amount, and negotiations are pending, and conditional agreements made for its settlement, it is hereby

Resolved, That J. Dean Smith is hereby authorized, empowered, and instructed to act as the attorney of this company in regard thereto, and to settle and compromise said claim as, in his judgment, may be most for the interest of this company.

O. A. Stevens, esq., on the part of Messrs. Stevens and Phelps, lessees of the road of this company, stated to the board that the motive-power furnished by Messrs. Grice and Long would not probably answer the purposes intended; whereupon,

On motion of J. Dean Smith, esq., it was

Resolved, That Messrs. Stevens and Phelps, lessees, be, and they are hereby, authorized to arrange for the purchase of two engines in place of those heretofore contemplated, the same to be of such patent and of such dimensions as they may deem expedient and best adapted for the more practical working operations of the road under their said
357 lease, the cost of which to be as a charge against this company in the manner and according to previous authority given said lessees for the purchase of the motive-power of Grice and Long.

The recording secretary, John Stone, esq., submitted to the board the following letter from Messrs. Riggs & Co., viz:

"WASHINGTON, D. C., *July* 16, *1866.*

"To the president of the Washington, Alexandria, and Georgetown Railroad Co.

"SIR: We hold three notes, signed by A. Hay, president of W. A. & G. R. R. Co., dated 1 July, 1863, each for $1,250, and interest, given for lots in this city, and secured by a deed of trust. The notes are all due. We have now to ask payment of the amounts due, with interest. Unless paid at an early day, we shall be compelled to call on the trustees to sell the property.

"Yours, respectfully,

(Signed) "RIGGS & CO."

Whereupon, on motion of S. M. Shoemaker, esq., it was

Resolved, That O. A. Stevens, esq., a member of this board, be, and he is hereby, authorized and directed to make an examination of the situation and condition of the property referred to, and to receive
358 proposals for the purchase of the same, and to report progress in this respect at the next meeting of this board.

O. A. Stevens, esq., on the part of Messrs. Stevens and Phelps, lessees, stated that they had secured the premises on the northwest corner of King and St. Asaph streets, in the city of Alexandria, Va., for depot purposes, and that a lease could be obtained of the same for a term of years. Whereupon,

On motion of S. M. Shoemaker, it was

Resolved, That Messrs. Stevens and Phelps be, and they are hereby, authorized to arrange for the same on such terms and for such length of time as they may deem expedient and wise, the cost for rents and repairs of which shall be as a charge against this company.

On motion of J. Dean Smith, esq., it was further

Resolved, That O. A. Stevens, esq., a member of this board, be, and he is hereby, authorized and directed to make inquiry in regard to the real estate of this company in Alexandria, to receive applications for the purchase thereof, and to report fully at the next meeting of this board.

On motion, the meeting adjourned.

(Signed) S. M. SHOEMAKER,
President pro tem.

(Signed) O. A. STEVENS,
Secretary pro tem.

359 (Indorsed:) Exhibit, J. S. F. No. 1, with French's deposition. Exhibit: Proceedings of directors of Washington, Alexandria, & Georgetown R. R. Co., on August 14, 1866.

360 67.—*Exhibits.*

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, and State of Virginia, on the 28th day of November, 1866,

Came the defendants, The Washington, Alexandria and Georgetown Railroad Company, S. M. Shoemaker, and J. Dean Smith, by counsel, and filed their seperate answers to the complainants' bill; which said answers are in the words and figures following, to wit:

Answer of the Washington, Alexandria, and Georgetown Railroad Company.

In the circuit court of Alexandria.

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN Railroad Company *ats.* JOSEPH DAVISON. } In equity.

The answer of the Washington, Alexandria and Georgetown Railroad Company to the bill of complaint of Joseph Davison, and to his amended bill.

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit of saving, exception, and advantage to the errors, uncertainties, and insufficiencies of said bill, answering to so much and such parts thereof as they are advised it is necessary, material, competent, or proper for them to answer unto, say:

They are a body corporate, duly created under the laws of the
361 State of Virginia; that they have by-laws, duly passed according to their charter, by which the complainant, if he is a stockholder in said company, is bound, and which they will produce at the hearing, or sooner, if required.

That, pursuant to the said charter and by-laws, in the month of October, 1865, Robert W. Latham, Frederick P. Stanton, Leonard Huyck, Joseph B. Stewart, and Samuel M. Shoemaker were duly elected directors of said company, to serve for one year, and until others were duly elected; and there hath been no lawful election of directors by said company since then to this day.

That, pursuant to said by-laws, there were chosen, by the said directors, Robert W. Latham, to serve as president, and Joseph B. Stewart, secretary, and Leonard Huyck as treasurer of said company.

That the above-named persons, from the dates of their said election respectively, and their selection for said respective offices, remained and continued in office up to and during the 5th of May, 1866; on which day Frederick P. Stanton resigned, and Oscar A. Stevens was, by the said board, pursuant to said by-laws, elected to fill his place.

That after the election of the said board of directors, in October, 1865, Oscar A. Stevens was appointed recording secretary of said company, and subsequently general superintendent of said road; which offices he filled up to and during said 5th May, 1866.

That it was the duty of the secretary to take charge of and keep
362 the seal of said company, and all the books thereof, and especially of the stock-book of the stock issued and the transfers thereof, the book of accounts, and the correspondence of the company; and the recording secretary was his clerk, and controlled and directed by him.

It was the duty of the treasurer to receive and account for all moneys coming to the hands of the company from any source whatever.

It was the duty of the superintendent of the road to collect all the earnings of the road, pay its necessary current expenses, deposit his cash, and keep his account with the treasurer.

Some weeks before the 5th of May, 1866, it had been discovered that the secretary had failed to discharge his duties; that a large amount of the stock of the company had been fraudulently issued, bearing the genuine signature of the president, secretary, and treasurer, and that the stock-books were in such condition that it would be exceedingly

difficult, if not impossible, to know what stock then outstanding was genuine stock; that on the failure of the Merchants' Bank, which occurred about the first of April, 1866, and of which said Leonard Huyck was president, part of the cash, which had been deposited with him as treasurer of said company, by the superintendent, to the amount of upwards of $16,000 had not been deposited by said treasurer in said bank, and was wholly unaccounted for by him; and after the failure of
363 said bank, that said Joseph B. Stewart, as secretary, had received from the superintendent of the road the current proceeds of the road to the amount of several thousands of dollars, of which he had failed to render any account; that the company had incurred heavy obligations for rolling stock and improvements necessary to the advantageous working of said road; their credit was greatly impaired, and the issue of said fraudulent stock had still further injured it. The bonds of the company had been issued to the amount of $300,000, bearing interest at 7 per cent. per annum, payable on the 1st June and 1st December. The accounts of the company did not seem to exhibit how much had been received for them, or how their proceeds had been applied. There appeared, besides this, to be a considerable amount of floating debt; the road, with its depots, turn-outs, and other conveniences, was not completed, nor was it stocked with the necessary rolling-stock; there was a large debt, secured by a deed of trust on so much of the road as lies in this county, claimed by the city of Washington, to the amount of about $90,000. The said Stevens as superintendent, and W. J. Phelps as manager of the said road, from January, 1866, had shown that they were fully capable of working it to the best advantage, with the greatest economy and the greatest profit; and under these circumstances, and to protect the interests of the creditors of the com-
364 pany, and after very mature deliberation, it was deemed most advisable to lease the road for a term of years to the said Stevens and Phelps; or, in more precise terms, to enter into contract with them to run the road for the company for a series of years. The terms of such contract *was* fully discussed and clearly understood, and were embodied into the paper-writing, a true copy of which is exhibited with complainants' bill as a lease to said Stevens and Phelps.

Whatever may be the strict legal character of that instrument, these defendants aver that it was entered into by the holders and owners of more than two-thirds of the stock of said company, either in person or by those fully authorized to represent them; that it is greatly to the advantage of said company; and without some such contract or agreement, by which they were enabled to maintain the credit of the company and carry on the said road, it must have stopped, to the utter loss of its creditors and the great injury of the public; and they affirm, and will maintain, that said contract or lease was executed in due form by persons and officers properly and by law authorized thereto, having power to make the same; that it was bona fide for the interest of said company, and is binding on said complainant and all other stock-
365 holders. They positively deny that it was made for the special benefit or advantage of any member of said board of directors, or any individual stockholder of said company, or that there was any fraud or fraudulent purpose in the procurement or execution of the same.

They further say, in point of fact, that Frederick P. Stanton was a member of the said board at the time the said contract or lease was under consideration, approved the same, and voted for the resolution authorizing the president and secretary to execute the same; and afterwards,

and after he had resigned his said office, put his name to the copy of the proceedings annexed to said lease, in order to show his approval.

They further say, in point of fact, the said lease was duly executed and delivered by the said president, Robert W. Latham, and the said Joseph B. Stewart, secretary, on the said 5th May, 1866, and before the said Oscar A. Stevens was a member of the said board of directors.

They further say and state that after the said contract or lease was entered into, and in order to stock the said road, by resolution duly passed, a copy whereof is exhibited with the answer of said Stevens, the said president and directors authorized the said Stevens and
366 Phelps to raise money to purchase engines, &c., for the said road, which had been contracted for by this company with Grice & Long, of Philadelphia, and with which contract this company had been unable to comply, and for that purpose to make a contract with Charles H. Stewart, one of the stockholders in said company.

That a contract was accordingly made by them with said Stewart, but said Stewart was unable to raise the money for them; they thereupon, in concert with this company, made a contract with Adams Express Company, for a loan or security to the amount of $30,000 for such rolling-stock, placing the nett earnings of said road in the hands of said Express Company as security for and to repay the said loan; and thereby, and by those means, also were they able to run the road, for they had neither engines nor cars necessary for that purpose.

The road was put in successful operation, and the said lessees, beside the rolling-stock thus put upon it, extended the rail, built and repaired station-houses and depots, and repaired the bridges, and it worked prosperously, and gave every reasonable hope that it would be able to meet all liabilities, to procure all the necessary rolling-stock, and pay the interest on the bonded debt due by the company, and to liquidate all the floating debt.

367 In the month of June, 1866, Leonard Huyck resigned his office as director and treasurer, and J. Dean Smith was appointed a director in his place, and Samuel M. Shoemaker, treasurer.

Shortly after this the said Joseph B. Stewart, treasurer, &c., began to show a fixed purpose to control the said road, and to disturb or break up all the arrangements which had begun to work and was working so advantageously for the company; to say when the board of directors should meet, and when they should not meet, and what business, and what they should not transact; and for these acts, and for his neglect and abuse of his office—secretary in other respects, he was by the board removed from his office; and thereupon, and without any authority from the board, undertook to call a meeting of the stockholders, to be held on the 1st day of October, 1866, to elect a new board of directors, at his private office in the city of Washington, which was not the office of said company.

And these defendants expressly and distinctly charge that the complainant, Joseph Davidson, was in collusion with said Stewart, or was used and employed by him to break up the working of the said road, to the destruction of its credit, and the great injury of its creditors; that the said Joseph Davison hath been associated with said Stewart in the said company from its organization.

These defendants aver that the said Joseph Davison and Joseph B. Stewart were parties in the organization of this company—and
368 so far as they are informed and believe, the said Davison hath never paid to the said company or any of its stockholders one dollar for the stock he holds—and have ever seemed to work together;

that the said Joseph B. Stewart, by authority of this company, negotiated large loans for the use of this company; and the accounts which he hath from time to time rendered show that instead of depositing the proceeds of said loans received by him with the treasurer, he undertook to expend them himself, and that he hath failed to account for or pay over many thousands of dollars, and from time to time hath prevailed on the board of directors to release the balances to him; that after he had as aforesaid called a meeting of the stockholders to elect a board of directors, a bill was filed in the supreme court of the District of Columbia, in which the said Joseph Davison was made one of the complainants, the object of which was to restrain the said lessees or contractors from running the said road, and to cancel the said lease or contract; and although the said Joseph B. Stewart was nominally a party defendant in that suit, yet, in point of fact, both in making and procuring affidavits in support of said bill, and in all the conduct of the said cause in the said court, the said Joseph B. Stewart was actor as complainant, and seemed to control, direct, and manage the same.

And these defendants further say that, before the said day
369 named for said meeting of stockholders, a bill was filed in said Supreme Court by some of the stockholders and this company against the said Joseph B. Stewart, Joseph Davison, and all other persons known to hold or possess any of the stock of said company, to prevent the holding of the meeting so called, and to ascertain who held the fraudulent stock which had been issued, and the amount thereof, by each person, and an injunction was ordered by said court to prevent said meeting and said election; but the same was held, and, as these defendants have been informed, the election was held as pretended in said amended bill.

Those two bills are pending and are undetermined in said court, and these defendants pray the same advantage of these facts as if they were specially pleaded. These defendants further state that the said Joseph B. Stewart took and retained possession of the seal and stock-books of this company, against the will of this company; and although the same has been repeatedly demanded of him, and he has surrendered the books of the company, he still retains the seal, so they cannot affix the same to their answer.

They have no knowledge of any of the proceedings of the said meeting, said to have been held on the 1st day of October, or who was present thereat, except so far as they are informed by said amended bill and exhibit, nor do they admit the statement made in said amended bill and the proceedings professed to be set out in said exhibit to be true.

Whatever may be the truth in respect thereto, these defendants
370 say they are not in any wise bound or affected thereby; that said meeting was called and held without any lawful authority, and all its proceedings are without effect to the rights, powers, and duties of these defendants, who are the only lawful president and directors of said railroad company. And these defendants, having fully answered, pray to be hence dismissed, with their costs.

J. DEAN SMITH,
OSCAR A. STEVENS,
Directors of Wash., Alex. and Geo'town Railroad Company.

DISTRICT OF COLUMBIA,
Washington County, to wit:

J. Dean Smith and Oscar A. Stevens, whose names are signed to the foregoing answer, made oath according to law, this 27th day of Novem-

ber, 1866, before me, a notary public, by lawful authority duly commissioned and sworn, that the facts stated in the said answer, as of their own knowledge, are true, and they believe those to be true which are stated on the information of others.

[SEAL.] CHARLES WALTER,
Notary Public.

[Rev. stamp, 5-cents.]

A true copy:

JEFFERSON TRACY, *Clerk.*

(Indorsed:) Exhibit J. S. F., No. 2, with French's deposition.

371 68.—*Decision supreme court appeals Va.*

EXHIBIT J. S. F., No. 3, with French's deposition.

OSCAR A. STEPHENS, &c., *vs.* JOS. DAVISON. } Copy decree.

VIRGINIA:

At a supreme court of appeals, held at the capitol, in the city of Richmond, on Thursday, July 2d, 1868, Oscar A. Stevens and W. J. Phelps, appellants, against Joseph Davison, appellee.

Upon an appeal from a decree pronounced by the district court held for the fourth judicial district, at the town of Fredericksburg, on the 8th day of January, 1868, affirming with costs, &c., a decree pronounced by the circuit court of Alexandria County, on the 31st day of December, 1866, in a suit in which the appellee was plaintiff, and the appellants were defendants.

This day came the parties by their counsel, and the court having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, without deciding whether or not it would have been competent to the stockholders of the Washington, Alexandria, and Georgetown R. R. Co. to make such a lease of their railroad as that in the proceedings mentioned, which is a question that does not arise in this case, is of opinion that it was not competent for the board of directors of the said company, without the sanction of a lawful meeting of the stockholders, to make the lease in the proceedings mentioned:

372 1st. Because a board of directors of a railroad company have no authority to make such a lease under the powers vested in such a board by law; and

2d. Because the said lease was in contravention of the 6th article of the by-laws of said company, which provides that no contract shall be made "involving the franchise of said road, except the same be approved by a general meeting representing a majority of the stock, after being recommended by a majority of the stockholders," the court being of opinion that, while the said lease does not involve the essential franchise of the said company to be a corporation, it does involve the franchise to take tolls upon the road of said company, which comes within the meaning of "the franchise of said road," as expressed in the said by-laws. And the court is further of opinion that, although by the 18th article of the by-laws of said company authority is given to the board of directors to alter or amend any of the said by-laws, the said

road had no authority, under the said by-law, or otherwise, to disregard or to alter the said provision of the 6th by-law, which was intended to impose a limitation upon the powers of the board of directors.

The court is further of opinion that the said lease, having been made by the board of directors, two of whom had been concerned in the fraudulent issue of a very large amount of spurious stock, greatly exceeding in amount the lawful stock of the company, having been made on the very day on which the regular term of office of said directors was to expire, and on which the annual meeting of the stockholders of said company should regularly have been held, and when the said board of directors had failed to issue the call which it was their duty to
373 issue for the said meeting, being made to two persons in the employment of said company, one of whom had been an agent to some extent in the issue of a large amount of such spurious stock, and securing to the said lessees a clear profit, except the amount payable for taxes to the extent of one-half of the gross earnings of said company during the term of said lease, besides the sum of seven thousand dollars per annum to be paid by the "Adams Express Company," under a previous contract with the same railroad company, and charging all the debts and expenses of the said company, except the taxes upon the share of the gross earnings reserved to the said company, the same must be regarded as a fraud upon the rights of the stockholders, and that this conclusion is not repelled by the statement that the said lease was made after consultation with a majority of the stockholders, and with their approval, because—

1st. It does not appear whether the stockholders thus consulted were the holders of genuine stock or spurious stock; and,

2nd. The approval of stockholders thus informally obtained could have no legal force or effect.

The court is therefore of opinion that the said lease is null and void, and should be so declared upon the final hearing of the cause.

The court is further of opinion that while, for the reasons assigned in the case of "Gardner vs. The London, Chatham, and Dover Railway Company," 2d Law Report, (Chancery Appeals, 200,) a court of chancery will be reluctant to appoint a receiver to take charge and manage a railroad, it is competent to do so when such a course is indispensable to secure the rights of the legitimate stockholders, and to prevent a failure of justice.

And the court is of opinion that under the circumstances of
374 this case it was proper for the court to appoint a receiver to take charge of & manage the said railroad until it can be ascertained by a proper inquiry to be made in this cause who are the legitimate stockholders of said company, to whom the custody and management of said railroad should be committed. And the court is of opinion that it is not made to appear that the circuit court erred in not appointing the lessees as the receivers to manage the said road during the pendency of this cause. But the court is of opinion that it was not proper to enjoin Robert W. Latham, Jos. B. Stewart, Samuel M. Shoemaker, Oscar A. Stevens, and J. Dean Smith from acting as directors and officers of said railroad company, or doing any act as such, such an order not being necessary to accomplish the object of the principal order.

The court is therefore of opinion that the said order of the circuit court be amended by striking therefrom the order of injunction last mentioned; and that the said order as amended be affirmed, and that the appellants do pay, under the appellee, thirty dollars damages, and also his costs by him about his defence in this behalf expended.

Which is ordered to be certified to the said district court, the clerk of which is ordered forthwith to certify the same to the clerk of the said circuit court.

Appellee's costs in the court of appeals, $25 30.

A copy. Teste:

(Signed) M. T. STARK, *C. C.*

(Indorsed:) Supreme c't appeals of Va. Stevens et al. vs. Davison. Decree. Ex. J. S. F. No. 3, with French's deposition.

375 69.—*Deposition Walter Lennox.*

In the circuit court of the United States for the district of Virginia.

SAMUEL M. SHOEMAKER
vs.
JAMES S. FRENCH.
&
JAMES S. FRENCH
vs.
SAMUEL M. SHOEMAKER.

The same interrogatories which were propounded to James S. French were repeated to Walter Lenox, who makes to them the following answers:

376 (Indorsed:) Shoemaker vs. French. Deposition W. Lenox. Filed Nov. 29th, 1869. W. H. Barry, clerk.

377 Answer to ques. 1st. The circumstances which led me to make the Agreement B were, that James S. French and myself the lawful and exclusive owners of the Alex. & Wash. R. R. Co. had been most unjustly and fraudulently dispossessed of the same; that we desired the coöperation and aid of other parties in the prosecution and recovery of our rights, and with that view were willing to make a considerable sacrifice of our interests in said co. At the instance of George W. Brent, att'y at law, employed by the said co. to prosecute its suit, I agreed to meet, and did meet, certain parties ready and proposing to unite with James S. French and myself in the prosecution of our rights, upon terms to be agreed upon. Preliminary to this meeting, Nov., 1866, and immediately preceding the same, Mr. J. S. French and myself met together, in my office, in the city of Washington, in which we considered and reviewed the affairs of said company, our own investments of money, and exertions in behalf of said co., and its present and
378 future value. We also discussed our private affairs and necessities, and mutually agreed that we would make no agreement which should not relieve our wants; the said French required $25,000 and myself $10,000. With this understanding between myself and the said French, we met the following parties at the house of R. T. Merrick: S. M. Shoemaker, J. D. Smith, Oscar A. Stevens, W. Jackson Phelps, and R. T. Merrick; and I made known to the said S. M. Shoemaker, who claimed to be, and was, represented as the authorized agent and capitalist of the Adams Express Co.—through whose means any arrangements, if made, would be carried out—and also to the said J. Dean Smith, to whom the said Shoemaker refer'ed me as his counsel, our demands for the specific advances above named, as preliminary to

any agreement, or attempt to make one. I was just out of prison, where I had been confined a long time, during which judgments and attachments to a very large amount had been obtained against, and were then impending over, me and my property; and French had a large family to support, and was without means. These things I urged to show the necessity of my demands. I did, however, say to the said Shoemaker, that I thought Mr. French's demands could be reduced to $20,000.

379 On my making these requirements and statements, the said Shoemaker did expressly state to me, if we made an agreement the advances would be made, & so said J. Dean Smith; and I at once told French what they said.

Answer to ques. 2nd. My necessities, and the desire to get help in the litigation in which French and myself were engaged; and if Shoemaker had not promised to make the advances, the same constituting a part of the agreement, I would not have made the agreement.

Answer to ques. 3rd. It is not possible for me to be mistaken in what I have stated on this subject, for the promised advances constituted the exclusive consideration, and all others were but auxiliary to it.

Answer to ques. 4th. The meeting referred to was held in the month of November, 1866. Agreement B was prepared and signed some two or three weeks afterwards; there were present J. Dean Smith, Oscar A. Stevens, R. T. Merrick, George W. Brent, & myself. I called attention to the fact that the advances agreed upon were not inserted in the agreement; but it being remarked it was especially an obligation assumed by Shoemaker, and to be executed by him for the benefit of all the parties, and should be the subject of a separate agree-

380 ment, I had full faith in the integrity of my associates, and acquiesced in the suggestion; and the more especially, as the said French, who was absent, had not signed it, and without his signature it would be incomplete.

Answer to ques. 5th. I was not aware of their fiduciary relations, & they were not made known to me, or to the said French, to my knowledge. It was especially enjoined upon said French & myself that it should be kept strictly private, but the reasons therefor were not stated.

Answer to ques. 6th. The affairs of the company were fully discussed, & the said French did claim to be a creditor of the company to a large amount.

Answer to ques. 7th. In the first interview between myself and said French, in relation to agreement B, he remonstrated with me for signing the same, as not being in accordance with the agreement we had made, pointed out his objections, and refused to sign it.

Ans. to ques. 8th. I did understand from some of these parties that the agreement should be enforced against said French, whether signed by him or not.

Ans. to ques. 9th. I cannot state positively, but some short time after the first meeting we signed it. As to the precise time when signed by said French I do not recollect.

Ans. to ques. 10th. Yes, upon repeated occasions, in the most earnest manner.

Ans. to ques. 11th. He has not, to my knowledge; I have heard

381 that he bought a lot over which the track was laid, but took the deed in his own name. I know of no debts he has paid.

Ans. to ques. 12th. Yes.

Ans. to ques. 13th. Not to my knowledge, and I had the means of

knowing; he never made any change for his services, but, on the contrary, he frequently made advances to aid the company.

Ans. to ques. 14th. I think not.

Ans. to ques. 15th. I was not.

Ans. to ques. 16th. Yes; it was to be assigned and held for the parties to the agreement. I have not derived any benefit from it; and I understand the lease has been vacated by competent judicial authority.

Ans. to ques. 17th. Stevens, in behalf of himself and Phelps, represented that they owned a valuable lease, which would certainly be sustained against the Wash., Alex. & Geo't'n Company, under which they held possession & control of the road, and thereby the said French and myself would derive immediate benefit and advantage. In the case of Smith and Merrick, the consideration was that they were to maintain & prosecute the rights & title of the Alexandria & Washington R. R. Co. to a successful or final termination.

382 Ans. to ques. 18th. The usual power of an attorney, and none other whatever. To the second part of the question, I answer, by no means. After Agreement B had been signed, a difficulty arose between the parties to the agreement. I was exceedingly desirous there should be a speedy settlement of the difficulty, and with that view thought it best that Brent should retain the seal, which he had accidentally come in possession of, and I refused to unite with French in demanding it.

Ans. to ques. 19th. I was not informed; the facts were not made known to me, and I did not know of it until some time after.

Ans. to ques. 20th. None whatever; I have received no part of the 20 per cent., and there has been no meeting, formal or informal, since said organization at which I have been present or invited to be present.

Ans. to ques. 21st. It was not an absolute sale; I did convey my interest in the road as set forth in said Shoemaker's exhibit, marked S. M. S. No. 2, but I deny, most positively, that it was ever intended to be, by either Shoemaker or myself, an absolute conveyance of my legal title and interest in said road, or was received by Shoemaker as such; but it was given by me, and received by him, as a mortgage to secure the loan of $2900; and also as a power of attorney for certain purposes, understood between myself & Shoemaker, the assignment being

383 revocable and utterly void upon the repayment of the $2900, which I also secured to the said Shoemaker by a transfer of the judgment obtained in the supreme court of the District of Columbia in favor of the Mess. Kirkwood against me, which the said sum of money was borrowed to pay; and further, at the same time the said assignment was executed, the said money borrowed, the said judgment transferred, I also executed a deed of trust upon certain real estate in the city of Washington, to wit, the west half of lot two, square three hundred & forty-seven, to secure the same. The said assignment was made absolute on its face, at my own instance, to enable the said Shoemaker the more efficiently to represent and promote our mutual interests under said agreement.

Ans. to ques. 22nd. He is, but to what amount I don't know; that French claimed to be a creditor to a large amount was known to Shoemaker.

Ans. to ques. 23rd. I have heard they filed such an answer, but when I don't know.

WALTER LENOX.

384 ST

ALEXANDRIA, VA., *November 17th*, 1869.

To the Hon'ble John C. Underwood, judge of the United States district court for the State of Virginia:

Under authority of your commission I have examined the witness, Walter Lenox, under oath, and return the above as his answer to the various interrogatories propounded to him.

Respectfully,

FRANCIS L. SMITH, JR.,
Special Commissioner.

385 70.—*Affidavit J. D. Smith.*

In circuit court of the United States for district of Virginia, November term, 1869.

SHOEMAKER
vs.
FRENCH.

On this 25th day of November, A. D. 1869, in open court personally appeared J. Dean Smith, one of the counsel of complainant, and made oath in due form of law that on or about the 29th day of October, 1869, he was shown by his colleague, G. W. Brent, a copy of the interrogatories filed in this cause by defendant, and that they prepared and served the notice herewith filed requiring the testimony to be taken in the form and manner presented by the 67 rule of the court, as amended in 1861. That affiant immediately wrote to the judge, then at Norfolk, informing him of giving the notice, and requested him to appoint a special examiner under said rule; that afterward the judge informed him that he would appoint Francis L. Smith examiner, to which affiant assented.

And affiant further says that no notice has been given by said Smith of the taking of testimony in this cause as required by said rule, and that he was not aware that said Smith had returned the papers filed in this cause, and taken without notice, until about 3 o'clock p. m. on 24 inst., when G. W. Brent told him that said Smith had in-
386 formed him after he had returned said papers. And affiant says that he did not know, and had no reason to *sespect*, that said papers were on file in this cause when he consented to set the cause down for final hearing for 30th December prox.

J. DEAN SMITH.

The complainant moved the court to order the testimony of both parties in this cause to be taken by Francis L. Smith, as special examiner under the 67 rule as amended in 1861, and in the manner and form presented therein, and that the evidence so taken by him be returned on or before the day of , A. D. 1869, and that the papers heretofore returned by said Smith, and filed in this cause, be taken off the file, and that this cause be continued to await the return of the testimony ordered hereby.

It is ordered this day of November, A. D. 1869, that Francis L. Smith, jr., be, and he is hereby, appointed to take the testimony offered by both parties in the case of Shoemaker v. French, in the manner and form presented by the 67 rule of the court as amended in 1861, and that

the papers heretofore returned by him be taken off the file in said
387 cause which is continued until after the day of ,
to await the return of the testimony to be taken hereunder.

388 71.—*Affidavit S. M. Shoemaker.*

On this 13th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, before me a commissioner of the United States for the fourth circuit, district of Maryland, personally appeared Samuel M. Shoemaker, and made oath that about the 1st of December, 1867, he was advised by O. A. Stevens that James S. French had applied to him to induce affiant to loan him, said French, the sum of five thousand dollars, on condition that said French would sign a certain agreement with Walter Lenox and others, by which it was agreed that affiant would pay the debt of the Alexandria and Washington railroad, in which said French and Lenox were the sole stockholders or owners, and in connection with the other parties to said agreement would reorganize said company. Said agreement was then in the hands of said Stevens or under his control, and its contents were well known to said French, who had discussed them with affiant and the other parties thereto frequently. And further that the said French would then convey to affiant all his interest and title to said railroad to secure the repayment of said sum of money; and second, to be held by affiant as trustee
for the parties to said agreement, in order to carry out its provi-
389 sions. Affiant agreed to advance said sum on the above conditions, and charged said Stevens, as his agent, to have said agreement properly signed, as well as a conveyance of said French's title and interest in said railroad property executed before the payment to him of said sum of money. Said Stevens then informed affiant that the said agreement had been signed by said French as well as a conveyance of his interest in said railroad, and had placed said papers in his hands, and affiant sent, by his counsel, to said Stevens said sum of five thousand dollars, for the purpose of paying the same to French, and received from him, by his counsel, said papers, and Stevens did pay said French said sum of money and remitted affiant the receipt of said French, a copy of which is hereto annexed, marked "French's receipt." Affiant had no communication directly with French, but said Stevens acted as agent of both parties in the above-described transaction. Affiant further says that he advanced said sum solely on condition that said French would, before its payment to him, sign and execute said agreement, and convey to affiant his entire interest as trustee for the parties thereto, and would not have advanced said sum or any sum to him upon a mere conveyance of his said interest by way of mortgage, as without said agreement he considered such interest worthless, and besides affiant
390 was already bound by said agreement when the same was completed by being executed by said French.

S. M. SHOEMAKER.

Subscribed and sworn to before me this 13th day of November, 1868.

ISAAC BROOKS, JR.,
Commissioner of the Circuit Court of the United States, for the Fourth Circuit in and for the District of Maryland.

391 *"French's received."*

ALEXANDRIA, VA., *Dec.* 7, 1867.

Received by the hands of O. A. Stevens, the sum of three thousand dollars, and two notes for a thousand dollars each, payable four months after date, making five thousand dollars paid me on account of S. M. Shoemaker, as set forth in an assignment and agreement dated Dec. 6th, 1867, between myself, Walter Lenox, S. M. Shoemaker, and others.

(Signed) JAMES S. FRENCH.

And the whole paper being in his handwriting.

392 (Indorsed:) U. S. cir. c't, dist. Va. Samuel M. Shoemaker v. James S. French. Filed Nov. 30, 1868. W. H. Barry, clerk.

393 72.—*Copy deed.*

This deed, made the nineteenth day of March, in the year eighteen hundred and sixty-eight, between Charles A. Alexander, trustee, of the city of Washington and District of Columbia, of the first part, Edward R. Lippett, and Mary F. Lippett, his wife, of Alexandria County and State of Virginia of the second part, and Samuel M. Shoemaker, of the city of Baltimore and State of Maryland, of the third part: Whereas by a deed bearing date 9th December, 1853, and of record in the clerk's office of Alexandria County court, in liber O. No. 3, page 354, the said Edward R. Lippett & Mary F., his wife, conveyed to the said Charles A. Alexander certain real estate in the city of Alexandria, in trust, however, for the separate use of the said Mary F. Lippett, with power to her to dispose of the same at pleasure either by deed or will, and in all respects to exercise ownership over the same as if she were a fem. sole; and whereas the said Mary F. Lippett has sold to the said Samuel M. Shoemaker a portion of one of the half squares of ground conveyed and described in said deed of trust, for the sum of $1,000, and has requested the said Charles A. Alexander, trustee as aforesaid, to unite with her in this deed to the said Samuel M. Shoemaker: Now this deed witnesseth, that the said parties of the first and second parts, in consideration of one thousand dollars, the receipt of which is
394 hereby acknowledged by the said Mary F. Lippett, do grant unto the said Samuel M. Shoemaker, the said party of the first part with special, and the said parties of the second part, with general warranty, two certain lots of ground in the city of Alexandria, and State of Virginia, in the square bounded by St. Asaph, Washington, Madison, and Montgomery streets, bounded as follows, to wit:

For the first of said lots: beginning on the south side of Montgomery street, sixty feet west of St. Asaph street; thence west, on Montgomery street, one hundred feet; thence south ninety-two feet, more or less, being the same depth as the lot of Wesley Summers, in the northwestern corner of the said square; thence east one hundred feet; thence north, by a straight line, to the beginning.

For the second of said lots: beginning on the west side of St. Asaph street, at the middle of the square between Madison and Montgomery streets; thence west one hundred and fifteen feet; thence north eighty-three feet more or less to the southern boundary of the lot of ground above described; thence east to St. Asaph; thence south, on St. Asaph street, to the beginning.

And the said parties of the second part covenant that they have the right to convey the said lots of ground to the grantee; that the grantee

shall have quiet possession of the said lots of ground, and that
395 they will execute such further assurances of the said lots of ground as may be requisite.

Witness the following signatures and seals.

C. A. ALEXANDER, *Trustee.* [SEAL.]
E. R. LIPPETT. [SEAL.]
MARY F. LIPPETT. [SEAL.]

[Rev. stamp $1 00.]

COUNTY OF ALEXANDRIA:

I, Robert Bell, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Edward R. Lippett, whose name is signed to the writing hereunto annexed, bearing date on the 19th day of March, 1868, has acknowledged the same before me in my county aforesaid.

Given under my hand this 19th day of March, 1868.

ROBERT BELL, *J. P.*

STATE OF VIRGINIA, *County of Alexandria, to wit:*

We, Robert Bell and W. N. Berkley, justices of the peace for the county aforesaid, in the State of Virginia, do certify that Mary F. Lippett, the wife of Edward R. Lippett, whose names are signed to the writing hereto annexed, bearing date on the 19th day of March, 1868, personally appeared before us, in the county aforesaid, and being examined by us, in the presence of each other, privily and apart
396 from her husband, and having the writing aforesaid fully explained to her, she, the said Mary F. Lippett, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under our hands this 19th day of March, 1868.

ROB'T BELL. *J. P.*
W'M N. BERKLEY, *J. P.*

CITY OF WASHINGTON, *District of Columbia, to wit:*

I, John F. Callan, a notary public, for the city aforesaid, in the District of Columbia, do certify that Charles A. Alexander, whose name is signed to the writing hereto annexed, bearing date on the 19th day of March, 1868, has acknowledged the same before me in my city aforesaid.

Given under my hand and official seal this 2nd day of May, 1868.

[SEAL.] JOHN F. CALLAN,
Notary Public.

VIRGINIA:

ALEXANDRIA COUNTY COURT,
Clerk's Office, May 11th, 1868.

This deed was received in the office, and having been acknowl-
397 edged before justices and a notary public, and having thereon U. S. internal revenue stamps, properly cancelled, to the amount of one dollar, admitted to record.

Teste:

J. TRACEY, *Clerk.*

[Rev. stamp 5 cts. cancelled.]

A copy. Tested:

J. TRACEY, *Clk.*

398 (Indorsed:) Lippett & als. vs. Shoemaker, B. & S. Recorded liber Y, No. 3, page 385. Copy. Filed January 24, 1870. W. H. Barry, clerk. Fee, $1 00.

399 73.—*Rule.*

VIRGINIA:

In the circuit court for Alexandria County.

JAMES S. FRENCH
v.
WALTER LENOX ET AL. } In ch'y and on in'j'n.

Ordered that a rule be issued against Samuel Shoemaker, Walter Lenox, Richard T. Merrick, Oscar A. Stevens, W. Jackson Phelps, J. Dean Smith, and George W. Brent, to show cause, if any they can, why they should not be fined and attached for a certain contempt by them to us offered in violating the order of this court, made in this cause, enjoining them from holding a meeting of the stockholders of the Alexandria and Washington Railroad Company for the purpose of electing a new board of directors and officers of the said company, returable to Saturday morning, the 14th day of November, 1868, at ten o'clock.

I, Jefferson Tracey, clerk of the circuit court of Alexandria County, in Virginia, do certify that the above order was entered and the rule issued on the motion of James S. French, and that the above is a true copy of the order entered; and further, that the paper attached hereto is a true copy of the rule issued.

Given under my hand this 14th day of November, 1868.

J. TRACEY.

[Rev. stamp, 5 cts., cancelled.]

400 The Commonwealth of Virginia to the sheriff of Alexandria County, greeting:

We command you that you summon Samuel Shoemaker, Walter Lenox, Richard T. Merrick, Oscar A. Stevens, W. Jackson Phelps, J. Dean Smith, & George W. Brent to appear before the judge of the circuit court of Alexandria County, on the 14th day of November, 1868, at ten o'clock a. m., to show cause, if any they can, why they should not be fined and attached for a certain contempt by them to us offered in violating the order of this court, made in the suit in chancery, wherein James S. French is complainant, and the said Samuel Shoemaker & the others are defendants, enjoining them from holding a meeting of the stockholders of the Alexandria & Washington Railroad Company for the purposes of electing a new board of directors and officers of the said company, and have them there this writ.

Witness Jefferson Tracey, clerk of our said court, at the court-house of said county, this 12th day of November, 1868, and in the 93rd year of this commonwealth.

J. TRACEY.

A copy. Teste:

J. TRACEY, *Clerk.*

(Indorsed:) J. Dean Smith.

401 74.—*S'p'a.*

The Commonwealth of Virginia to the sheriff of Alexandria County, greeting:

We command you to summon Walter Lenox, Samuel M. Shoemaker, and the Adams Express Company, to appear at the rules to be held in the clerk's office of our circuit court of the county of Alexandria, at the court-house of the said county, on the first Monday in November next, to answer a bill in chancery exhibited against them in said court by James S. French.

And unless they shall answer the bill according to law, the court will take the same for confessed, and decree accordingly. And this they shall in no wise omit, under the penalty of £100. And have them there this writ.

Witness Jefferson Tracey, clerk of our circuit court, at the court-house aforesaid, this 29th day of October, 1868, and in the 93rd year of the Commonwealth.

The object of this suit is to restrain the said Walter Lenox, Samuel M. Shoemaker, The Adams Express Company, & all other persons claiming or holding any of the stock of the Alexandria & Washington Railroad Company, from holding a certain general meeting of the stockholders of the said Alexandria & Washington R. R. Co., advertized
402 to be held on the 29th of October, 1868, at the Mansion House in Alexandria, Va., from electing a new board of directors for said company, or doing any other act, under said notice; and that the said Shoemaker, his agents or attorneys, may be restrained and enjoined from representing or causing to be represented, from voting or causing to be voted upon, the stock of your orator, under pretence of authority conferred by the mortgage referred to in complainant's bill.

Teste:

J. TRACEY, *Cl'k.*

(Indorsed:) Circuit court. French v. Lenox et al. S'p'a & inj.
403 20 November rules, 1868.

(Indorsed:) French v. Lenox et al. Copies. Rule and order for rule. Fee $1 25.

404 75.—*Resolutions stockholders.*

At a general meeting of the stockholders of the Alexandria and Washington Railroad Company, convened at the office of Brent and Wattles, in the city of Alexandria, December 18th, 1865,

James S. French was called to the chair, and Walter Lenox appointed secretary.

Whereupon, on motion, George H. Robinson, Nathaniel Boush, T. T. Hill, Charles E. Stewart, and Walter Lenox were elected directors of the company for the year ending December, 18, 1866.

The following resolution was also, on motion, adopted:

Resolved, That the president of the company is hereby authorized and directed to institute such legal proceedings, and take such steps, as he may deem right and expedient to maintain and recover the rights of said company.

WALTER LENOX.

Witness my hand and seal of company.

(Indorsed:) Meeting French & Lenox, Dec. 18, '65. Election of board for 1866. Resolution of stockholders.

405 In the clerk's office, circuit court U. S., district of Va.

RICHMOND, *Nov.* 19*th*, 1870.

A true transcript from the record.

In testimony whereof I hereunto set my hand and affix the seal of said court the day and year above written.

[SEAL.] W. H. BARRY, *Clerk.*

(Indorsement on cover:) No. 368. James S. French, appellant, vs. Samuel M. Shoemaker. Virginia C. C. U. S. Filed 9th December, 1870.

CERTIORARI AND AGREEMENT OF COUNSEL, ETC.

SUPREME COURT OF THE UNITED STATES.

No. 164.

JAMES S. FRENCH, APPELLANT,

vs.

SAMUEL M. SHOEMAKER.

FILED NOVEMBER 21, 1871.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the district of Virginia, greeting:

Whereas, in a certain suit in said circuit court, between Samuel M. Shoemaker, complainant, and James S. French, defendant, (in original bill,) and James S. French, complainant, and Samuel M. Shoemaker, defendant, (in cross-bill,) which suit was removed to the Supreme Court of the United States by virtue of an appeal taken by James S. French, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"The clerk of the circuit court of the United States for the district of Virginia has omitted to certify and send up with the record in this case the following documents which were in proof in the court below,

2 and are essential to the proper hearing of the case in this court, to wit:

"Exhibit O," being a copy of a writ of summons issued by said circuit court in the case of the Adams Express Company vs. W. Marbury and others, and referred to, and made part of the appellant's cross-bill, in the third paragraph thereof, (Record, p. 50.)

Also, the bill of complaint filed in the said case of the Adams Express Company vs. W. H. Marbury and others, which was read in proof on the hearing below, as will be seen by the opinion of the Chief Justice, (Record, p. 69.)

Also, a certified copy of an interlocutory decree of the circuit court of Alexandria County, Virginia, rendered on the 23rd day of November, 1867, in the case of the Alexandria and Washington Railroad Company vs. The Alexandria, Washington, and Georgetown Railroad Company and others."

3 You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, A. D. 1870.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued 10th May, 1871.

4 (Indorsed:) No. 368. Sup. Court U. S. December term, 1870. Shoemaker vs. French. Certiorari.

5 EXHIBIT O.—*Summon' to appear before Judge Underwood for taking possessisn of road.*

In the circuit court of the United States for the State and district of Virginia.

THE ADAMS EXPRESS COMPANY, PL'FFS,
vs.
WILLIAM H. MARBURY ET AL., DEF'TS.

It appearing to the court on position and affidavit, that the order en-

tered in this cause, on the 22d day of August, 1868, has been violated by the seizure of the road of the Washington, Alexandria, and Georgetown Railroad Company by one James S. French and James M. Steuart, and have expelled therefrom Oscar A. Stevens and W. Jackson Phelps, the receivers of this court under the order aforesaid, it is, therefore, on motion of said complainant,

Ordered, That the said James S. French and James M. Steuart do appear before me, one of the judges of the said court, at chambers, at 10 o'clock, a. m., to-morrow, (Thursday,) the 1st day of October, at the court-room of the United States district court, in the city of Alexandria, to show cause why said road should not be restored to the receivers, and they, the said French and Steuart, fined and attached for a contempt for disobeying the order of this court.

(Signed) J. C. UNDERWOOD,
District Judge.

SEPTEMBER 30, 1868.

A true copy. Test:

G. C. HEWES, *D. M.*

This paper can be used as a part of the record in the case of French vs. Shoemaker in the Supreme Court of the U. S.

GEORGE W'M BRENT,
Att'y for Shoemaker.
FRED. P. STANTON,
Att'y for French, the Pl'ff in Error.

6 EXHIBIT NO. 14.—*Decree of November* 23, 1867.

And at another day, to wit, at a circuit court continued and held for the said county of Alexandria, at the court-house aforesaid, on the 23d day of November, 1867.

Decree. November term 1867.

This cause coming on again this day to be heard on the papers formerly read, the report of commissioner W'm C. Yeaton, the petition of the mayor, board of aldermen, and board of common council of the city of Washington, and the petition of Coleman, the National Union Bank of Baltimore, the National Exchange Bank of Baltimore, Horatio R. Riddle, Adam Chapman, D. A. Given, D. W. Jones, L. M. Flournoy, and V. S. Ray, trading as Given, Jones & Co., citizens of the States of Maryland, New York, and Kentucky, and, being argued by counsel, on consideration whereof, the court being of opinion that the request of the mayor, board of aldermen, and board of common counsel of the city of Washington, is reasonable and ought to be granted, doth order and direct that the said petitioners be united and joined as complainants in this cause; and it further appearing to the court that the petitioners, Coleman, the National Bank of Baltimore, and others, who have filed their said petition to be made parties defendants to this cause, are the same persons who have heretofore obtained an injunction from the honorable circuit court of the United States for the State of Virginia, against James S. French and others, enjoining the said French from the prosecution of this suit; and it appearing to the court, for the reasons set forth in said petition, that the prayer of the petitioners is reasonable, doth order and direct that said petitioners be

made parties hereto, and that the suit be proceeded in hereafter against them as co-defendants, and to this end the plaintiffs are required to amend their bill.

And the court deeming proper at this stage of the cause to express its opinion on some of the questions herein involved, with a view to a speedy determination of the same, doth adjudge, order, and decree that the whole proceeding of the county court of Alexandria County, at its February term, 1862, substituting Joseph B. Stewart as trustee in lieu of Walter Lenox, under the deed of trust of the 16th of July, 1857, was without authority of law, and null and void; and that all the subsequent proceedings of the said Stewart under said deed—his sale of the said road and its franchises to Alexander Hay, and the incorporation of the said Washington, Alexandria, and Georgetown Railroad Company growing out of the said sale—are null and void, and that the same should be set aside and annulled.

And it further appearing to the court, from the petition of Coleman and others, that, since the proceedings aforesaid, various interests of large magnitude have supervened which will render it inexpedient at this time to make a decree for the restoration of the road to the complainant, the Alexandria and Washington Railroad Company, until said interests shall be further investigated, the court doth permit that the said road remain under its present management, subject to the future orders and decrees of this court; and all other questions not embraced in this order are reserved for future consideration, and leave is granted to any and all of the defendants in this cause to apply to this court for such other and further relief, either by petition or cross-bill, as they may be advised by counsel to be expedient and proper, and leave is granted to all or any of the parties to file exceptions to the report of commissioner W. C. Yeaton.

This paper can be read as a part of the record in the case of French vs. Shoemaker, in the Supreme Court of the U. S.

GEORGE W'M BRENT,
Att'y for Shoemaker.
FRED. P. STANTON,
For Ja's S. French.

7 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing are true copies of papers on file in the cause of French vs. Shoemaker.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Richmond this 3rd day of November, 1871.

[SEAL.] M. F. PLEASANTS, *Clerk.*

7½ EXHIBIT L.

ADAMS EXPRESS CO.
vs.
DAVISON ET AL., W., A. & G. R. R. Co.

8 To the honorable the judges of the circuit court of the United States for the fourth circuit, district of Virginia, sitting in chancery:

The Adams Express Company, a corporation duly incorporated under

the laws of the State of New York, and a citizen of that State, brings this its bill of complaint against Joseph Davison, a citizen of the District of Columbia; W'm H. Marbury, a citizen of the State of Virginia; The Washington, Alexandria and Georgetown Railroad Company, duly incorporated, and a citizen of the State of Virginia; Oscar A. Stevens and W. Jackson Phelps, citizens of the District of Columbia.

And thereupon your orator complains and says that it is a corporate body, duly incorporated under the laws of the State of New York, and is a citizen of the State of New York; that the said Washington, Alexandria and Georgetown Railroad Company is a corporation, duly created and existing by the laws of Virginia, and is a citizen of that State.

Your orator further shews—1st. That it is a company, chartered as carriers and forwarders of express freights, money, &c., and, as such, has large and important dealings and intimate connection with the various railroad companies, over whose roads express freights are transported; that the settled and well known policy of your orator has been, and is, to use its means in aiding and promoting the interests of such railroad companies, and your orator has been often applied to for such aid and assistance, by railroad companies, requiring pecuniary means, which has often been responded to by your orator, when such aid could be usefully and safely extended.

2. That the said Washington, Alexandria and Georgetown Railroad Company was, in pursuance of the laws of the State of Virginia, the successor of an antecedent railroad company, known as the Alexandria and Washington Railroad Company, and, as such, claimed to become the owners of all its rights, property, and franchises, as well as subject to all the liabilities, debts, and liens of said old company; that at the date of the dissolution of the old company, and the organization of the Washington, Alexandria and Georgetown Railroad Company, the old company was in debt to the city of Washington in the sum of $60,000, with arrearages of interest, and secured by a deed of trust on the said road, executed on the 19th day April, 1855, to Joseph H. & A. Thomas Bradley, and was also, amongst other liabilities of a large amount, indebted to one Benjamin Thornton, by coupon bonds, amounting to $30,000 and secured by a deed of trust on its road to Walter Lenox, dated the 16th day of July, 1857.

3. That, at the date of the organization of the Washington, Alexandria and Georgetown Railroad Company, the road of the old company terminated at the southern abutment of Long Bridge, across the Potomac River, and had no power to bridge the said river for railroad purposes, as your orator is informed and believes; that, after the organization of the new company, the said new company obtained from the Congress of the United States, on the 3d day of March, 1863, a charter authorizing it to extend their railroad from the south side of the Potomac across said river, to and along Maryland avenue, to the Baltimore and Ohio depot; that, in pursuance of said authority, the Washington, Alexandria and Georgetown Railroad Company constructed a first-class railroad bridge across the Potomac, and extended its road to the Baltimore and Ohio depot, at great cost and expense, and to secure which, the said new company issued its coupon bonds, to the amount of $300,000, and, to secure the same, executed a deed of trust on the entire road, from Alexandria, in the State of Virginia, to the Baltimore and Ohio depot, in the city of Washington, to D. Randolph Martin and Hamilton G. Fant.

4. That, during the period of the late civil war, the Government of the United States took possession of said road, and it was used for the

transportation of troops and munitions of war, for which the said
10 company received no pecuniary remuneration, and when the said road was restored by the Government, in 1865, sometime after the close of the war, the said company was without motive power and running stock, and was unable to work and operate the same, and at the same time the creditors of the old company, especially the city of Washington, were pressing for their demands. In this emergency the said Washington, Alexandria and Georgetown Railroad Company made application to your orator for relief; and, in pursuance of the policy before indicated, your orator agreed to assume and discharge the said debt of $60,000, due to the city of Washington, on certain terms and conditions; also, to transport all its freight over said road, and to pay or credit said railroad company, at least the sum of $7,000 annually, at all events, and as much more as said railroad company should earn by the rates fixed in the contract made between them; and, in consideration thereof, the said railroad company agreed and undertook that your orator should have the right and privilege of transporting and forwarding, over said road, express matter and freight for the term of ten years, and the freight cars of your orator should run with the passenger trains of the said road, which said agreement bears date the 1st day of February, 1866, a true copy of which, marked as Exhibit A. E. C. No. 1, is hereto attached as a part of this bill.

That, after the making of the said agreement, and before your orator was required to pay the said indebtedness due the city of Washington, and whilst your orator was able and ready to execute the said agreement on its part, the financial condition and embarrassments of said railroad company prevented the execution of the agreement on its part. Its coupons for interest were past due, and a sale of its road was threatened, and it was entirely without means to procure rolling-stock and motive-power to equip the same. In this state of affairs, for the purpose of relieving the road from its embarrassed condition, the board of directors of the said company, with the assent of a majority of the stockholders, on the 5th day of May, 1866, executed a lease of its said road to Oscar A. Stevens and W. Jackson Phelps, for the term of ten years; amongst other provisions of said lease, it was agreed that
11 said railroad company should furnish, for the use of said road, certain stock and motive-power which had been previously contracted for by said company; that said Stevens and Phelps should observe and fulfil the contract thereto made and entered into with your orators and the said railroad company, and the said railroad company reserved to itself the right to make such modifications in the said contract as would make it more effective; and that when your orators should have paid the debt due Washington City, the annual credits of $7,000 to be paid by your orators, as aforesaid, should be allowed in extinguishment thereof, and be considered as a part of the gross earnings of the road, and divided according to the provisions of the lease; in consideration whereof, the said Stevens and Phelps agreed, amongst other things, to pay to said railroad company fifty per cent. annually of the gross earnings of said road, after deducting therefrom $21,000, which the said lessees agreed to pay on the coupon debts secured by deed to Martin and Faut; and, also, the sum of $7,500, which they agreed to set apart annually as a sinking fund, to meet the said debt of $300,000 when it should mature; and the lessees also agreed to run the said road and keep it in repair at their own costs and charges. A true copy of said lease is hereto annexed, and attached to Exhibit A. E. C. No. 2, as part of this bill.

That, in consequence of the want of credit of the said railroad company, and its entire insolvency, it failed to procure said motive-power and running-stock, and on the 21st day of May, 1866, the board of directors of said company passed a resolution authorizing Stevens and Phelps, as its agents, to make such arrangements as they could with any party who could comply with the contract for the purchase of said motive-power and cars, and put the same upon the road, for use thereon, to remain the property of such person until paid for by the earnings of the said road, through said Stevens and Phelps; that said parties endeavored to induce several persons to furnish said road with all the necessary motive-power and rolling-stock deemed essential under said resolution, but, failing to find any one, applied to your orator for aid and relief; and your orator, relying on the contract of February, 1866,
12 the said lease of the 5th May, 1866, and the resolution aforesaid, entered into an arrangement with said lessees to secure and protect the said road from a sale, and to place it in a safe and efficient condition for future beneficial and safe operations; that said agreement was not made with the said lessees as such, but with them as agents of said railroad company, acting under the orders of said company; that among the conditions and provisions of said agreement which were most vital, and without which your orator would not have entered into the same, or paid for said motive-power and cars, were:

1st. The payment to your orator of the whole gross earnings of said road to be drawn upon for the expenses of said road.

2d. That said motive-power and rolling-stock, when put upon said road, should be and continue the sole property of your orator until fully paid for.

3d. That your orator should pay, out of the earnings, the interest already due, or to become due, in order to prevent a sale of said road; and

4th. The confidence your orator had in the personal skill, ability, and integrity of said Stevens and Phelps in the management of said road and said machinery, and to make said payments to your orator of its earnings, in liquidation of the money advanced by your orator, under the agreements aforesaid, and without any one, or all of these stipulations, your orator would not have entered into the said contract, and paid for said motive-power and running-stock under the said agreement. A copy of which agreement is filed as part of this bill, marked Exhibit No. 2.

That, after the said running stock and motive-power were put on said road by your orator, under said contract, it was found, upon trial, that the said motive-power was insufficient, and was also badly damaged by an accident and rendered useless, and in this emergency your orator was again applied to for aid, and under a resolution of the said board of directors, took possession of the only engine owned by the said company, which was old and worn out, expended a large sum of money upon its repair, upon the terms of the existing contract, and under similar
13 conditions as to said Stevens and Phelps. That the said board recognized and dealt with your orators on said terms, and expressed their satisfaction with the liberal aid afforded by your orator, after said contract, Exhibit A. E. C. No. 2, was made. That afterwards, upon the application of said Stevens and Phelps, and in pursuance of an order of the supreme circuit court of the District of Columbia, which had appointed a receiver of the road for the north bank of the Potomac, your orator's superintendent, S. M. Shoemaker, made a contract to furnish another locomotive for the use of said road out of his own means, but in

order to aid in carrying out said contract upon the terms of the said original agreement, and under similar conditions as to said Stevens and Phelps.

That your orator has fully, and in good faith, fulfilled the conditions of the said contract on its part to be performed, and purchased, paid for, and put upon the road all the running-stock and motive-power with which it has been and is now operated, and without the aid your orator thus furnished the said road could not have been maintained, and would have been entirely useless, not only to its stockholders, but also to the public, and would have been sold under the several deeds of trust which it had executed.

That, in consequence of the many repairs needed upon the said road and bridge, and the embarrassments of said company growing out of its unfortunate condition, your orator has been called on to advance largely for said company to relieve it of its difficulties, and on account of said advances there is due your orator a large sum of money, being at least $20,000. That your orator advanced these sums upon the faith of said contract, and its implicit confidence in the skill, ability, and integrity of the said Stevens and Phelps in the management of said road and said machinery, and to them only your orator looked for a faithful and true execution of the contract aforesaid, and the due care of said motive-power and cars.

5th. That the said Joseph Davison, pretending to be a stockholder in said railroad company, conspiring and combining with others unknown to your orator, except as to his co-complainants, filed a bill in the supreme court of the District of Columbia, to set aside and annul
14 said lease, and has also, in the circuit court of Alexandria County, in the State of Virginia, filed a bill in his own name to set aside said lease, charging the same to have been executed and made without authority, and asking for the appointment of a receiver. That said Davison has paid nothing for the stock, and in fact has parted with it, if he ever owned it, which he now professes to represent; that he is not recognized on the stock-books of said company as a stockholder; that the stock which he professes to claim was issued fraudulently and without authority; that said Davison was fully aware and cognizant of the said lease executed to the said Stevens and Phelps; that, with such knowledge, he expressed to the said Stevens and Phelps his approval of said lease, and, as lessees of said road, entered into agreements with them for the transportation of freight over said road; that, subsequently, *by* the said Davison, with all this knowledge, combined with others to institute suits in the courts of the District of Columbia, and in the circuit court for Alexandria County, and afterwards united in holding a fraudulent election for directors of said company, agreed to hold a seat as director in the board so fraudulently elected, with one Joseph B. Stewart, who had notoriously and confessedly over-issued stock of said company, as its secretary, to a large amount.

That the said suit in the circuit court for Alexandria County was proceeded in, and a motion was made for an injunction to restrain the said Stevens and Phelps from operating the said road, and for the appointment of a receiver, and the said circuit court, on a preliminary hearing, being of opinion that, on a final hearing, said lease should be declared null and void, enjoined the board of directors from acting as such, and appointed William H. Marbury as receiver of the said road. From this interlocutory decree the said Stevens and Phelps obtained a supersedeas from the supreme court of appeals of Virginia, and, on argument, the said court reversed said decree, so far as it enjoined the board

of directors from acting, but, being of opinion that the said board had no authority to execute said lease, affirmed said decree of the circuit court. A copy of said decree is herewith filed, marked as Exhibit A. E. C. No. 3, as a part of this bill.

15 6th. That your orator had, in this suit, a substantial and valuable interest; that Joseph Davison was well and fully aware of the same, yet he did not make your orator a party to the said suit; that the pleadings in said suit fully disclosed the interests of your orator, yet neither the said Davison nor the said court required an amendment of the said bill, so as to make your orator a party thereto; but in utter and reckless disregard of his rights, proceeded to adjust and dispose of the same.

That at this date all the rolling-stock and motive-power on said road was the sole and exclusive property of your orator, and so known, as your orator believes, to the said Joseph Davison; that if said property is withdrawn from said road its operations will be stopped; that a receiver will be powerless to execute the contracts aforesaid; that your orator has largely invested in said road, and will be materially damaged by the execution of the decree aforesaid; that the public as well as individual interests will be materially damaged thereby.

7th. That your orator cannot, for the protection of its interests, make itself, by any known legal method, a party to the said suit, and have its rights fairly adjudicated; that, even if it were competent for your orator to become a party to said suit, by any known legal method, your orator avers and charges that he has reason to and does believe, that, from prejudice and local influence, that it will not be able to obtain justice in the said circuit court for Alexandria County; that, were your orator a party to said suit, as it should have been, an affidavit of the facts above set forth would have entitled your orator to a removal of the said suit, under the act of Congress of the United States, dated March 2, 1867, entitled, "An act to amend an act entitled An act for the removal of causes, in certain cases, from State courts, approved July 27th, 1866." That your orator is, by the charge aforesaid, of prejudice and local influence, entitled to relief direct, to the same extent as if it were a party to said cause, and that it would be circuity and a vain act to refer your orator to said circuit court for relief, solely to be remitted to your honorable court.

8th. That the object of this bill is not to withdraw from the said

16 State court the vital question therein pending, to wit, whether the said lease is null and void or not; that said suit can continue, and the validity of said lease determined on the final hearing of the said cause; but your orator shows and avers that, in the meantime, said Davison and William H. Marbury should be restrained and enjoined from carrying into effect the said ex-parte preliminary order, appointing said Marbury as receiver, which they threaten to do, the direct effect of which will be to oust your orator's said agents, and the agents of said railroad company from the said road, and nullify all its contracts, and this, too, in a proceeding to which it has been no party.

9th. That, in view of the fact that said Davison is not a legal stockholder in said company; that he was cognizant and well advised of the contracts aforesaid; that he approved of the execution thereof, and yet did not make your orator a party to said suit, indicates, and your orator so believes and charges, that the objects and purposes of the said Davison were fraudulent, and designed to injure, oppress, and defraud the said lessees, as agents of said company, and of your orator; that the said Davison has a large interest in the State of Virginia, in a valuable

tract of land, well timbered, and from which he, in conjunction with a cousin, Joseph Thornton, supplies the city of Washington with a large amount of fuel; that said Davison and Thornton made application to the said lessees for a reduction of freights on the transportation of this wood, which was refused by the said lessees, and that one of the objects of the suits of said Davison was to annoy, harass, and injure the said Stevens and Phelps, and to coerce a reduction of freights.

10th. That the said old road was duly chartered by an act of the general assembly of Virginia, passed the 27th day of February, 1854, and, by the act of Congress before mentioned, approved March 3d, 1863, authorizing its extension over the Potomac River to the Baltimore and Ohio Railroad depot, in Washington City; that the said circuit court for Alexandria County has no jurisdiction over that part of the said road crossing by bridge the Potomac River, and north of its south bank;

17 that the said Joseph Davison, conspiring and combining with others, united in a suit in the supreme court of the district of Columbia, to annul said lease, and individually instituted the said suit in the circuit court of Alexandria for the said purposes and objects, and that, unless your honorable court shall take cognizance and jurisdiction of this suit, the said circuit court for Alexandria County may decide one way as to your orator, and from which there can be no appeal to the Federal courts, whilst the said United States court, in the District of Columbia, may decide directly the opposite.

11th. That this honorable court, in February, 1867, took cognizance of a suit brought by Horatio G. Riddle and others, claiming to be stockholders in the said Washington, Alexandria and Georgetown Railroad Company, against James S. French and others, to restrain and enjoin the said French from prosecuting a certain suit in the name of the said Alexandria and Washington Railroad Company, against the said Washington, Alexandria and Georgetown Railroad Company and others, for the recovery of the said railroad, charging that the said latter company was organized and created in fraud of the rights of the said Alexandria and Washington Company; that this suit is but a supplement and auxiliary to the said suit now pending in this honorable court.

And your orator prays that the said Joseph Davison and William H. Marbury, their agents, servants, abettors, or attorneys may be strictly enjoined and prohibited from disturbing, or attempting to disturb said Stevens and Phelps in the possession of said railroad, or from preventing, or attempting to prevent said Stephens and Phelps from running or operating the said road with said motive power or machinery, or from receiving the revenue or earnings derived from operating or running said railroad, and paying the same to your orator, according to the terms of said contracts set out in Exhibit No. 2, until such time as the whole amount expended by your orator for said cars, motive-power, or locomotive, and all expenses incurred by it in regard to the same, or said contracts be paid from said revenue or earnings, according to said contract, or until the further order of this honorable court, and that an account may be taken, under its order, of all moneys

18 paid, and expended, or received by your orator under said contract; that the said contracts may be specifically and strictly enforced, and that your orator may have such other and further relief as the case may require, or as to your honorable court may seem right and proper.

To the end, therefore, that said Joseph Davison and William H. Marbury may, if they can, show why your orator should not have the relief hereby prayed, and that they may, upon their several and respective

corporeal oaths, and according to the best of their knowledge, remembrance. information, and belief, true, direct and perfect answers make to the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written he or they are severally and respectfully required to answer, that is to say:

1st. Whether said Davison paid any, and if so, what sum, if any, for any stock he claims to own or have in said Washington, Alexandria and Georgetown Railroad Company; from whom he received said stock? Whether he did or did not assign and transfer all the stock he had of first issue of stock of said railroad company, and deliver the certificate therefor to D. Randolph Martin?

2d. Whether said Davison ever returned said certificate of stock to the stock-book of the company; and whether it is in said stock-book duly cancelled? Whether he holds any certificate of said stock, of either 300,000 or 500,000 issue; if so, for what number of shares; what is the number of the certificate; who issued it to him; whether it was issued by special order, or whether the certificate he holds was a blank, signed and left in the hands of the treasurer, Cha's H. Stewart, and by him issued, without the authority or knowledge of the other officers of the company?

3d. Whether any one, and if so, who, procured or incited the bringing of the suits in the supreme court of the District of Columbia. and the circuit court of Alexandria County, to annul the lease to Stevens and Phelps? Was it not done by the suggestion, procurement, or by the instruction of Joseph B. Stewart? What motive did said Stewart hold out to induce you, the said Davison, to bring said suits? Who has paid, or is to pay the expenses of said suits? Have you, the said
19 Davison, any arrangement, agreement, or understanding with any person, firm, or corporation, as to the expenses of said suits; if so, state fully what they are, in detail?

4th. When did you first know of the execution of the lease to Stevens and Phelps? Did you not deal with them as lessees? If so, state how and when you commenced so dealing with them. State what they did for you. State contract fully.

* * * * * * * *

6th. Whether you have had any, and what, conversations with W'm H. Marbury in regard to said road, and his appointment as the receiver in your suit. State the substance of such conversation. Did you not offer to act as his agent in running said road? Did he agree to it, or had you any agreement or understanding in regard to it? Were you to furnish locomotive or cars for the purpose? Did you offer to become the security of said Marbury as receiver, or was there any, and if so, what, understanding, in regard to this between you and said Marbury?

7th. Whether you did meet said Marbury and Judge Thomas in Alexandria in regard to *to* the suit in his court, or as to Marbury's proceeding therein, some time in the present month of July; if yea, was the meeting by appointment? Where was it held; who was present; what was the substance of the conversation, or understanding, or agreement had, between any, and if so, what persons? Did you have more than one meeting with said Judge Thomas and said Marbury? If so, state fully the object of such meeting, and what was said, done or agreed at any or all of them?

9th. Whether said Davison expended any, and how much, money, in fees and costs of said suits in Washington and Alexandria? To whom, was it paid, and by whom?

10th. Whether said Marbury has had any interviews and conversa-

tions in regard to said suits or his receivership? If yea, with whom, and where? Has he had any understanding, and with whom, as to the security on his bond to be given as such receiver? If so, with whom, and what was the understanding or agreement had with any person, or persons, or corporations in regard thereto? State them fully and particularly. Has he had any, and what, understanding or agree-
20 ment with any person, firm or corporation, in regard to working said road as receiver; if so, with whom and when? State fully such understanding or agreement.

11th. Whether said Marbury has made any offers, and to whom, in regard to working said road as receiver, based upon the furnishing the security for his receiver's bond or otherwise? If so, state fully and at large what offers were made, and to whom.

May it please your honorable court to grant unto your orator the writ of injunction, according to the prayer of this bill of complaint, enjoining and restraining said Joseph Davison and W'm H. Marbury, their agents, servants, attorneys, and abettors from disturbing said Stevens and Phelps, or your orator in the possession of said railroad, or *or* motive-power, locomotive or cars thereupon, or from working said road and receiving the earnings or revenue thereof, according to the strict and true meaning of the said contracts made by your orator, until they are fully and entirely fulfilled and completed, or until the further order of this court, either by means of or under pretence of any proceedings in said suit in the circuit court of Alexandria County, or otherwise; and the United States writ of subpœna commanding the said Joseph Davison, William H. Marbury, Oscar A. Stevens, W. Jackson Phelps, and the Washington, Alexandria, and Georgetown Railroad Company to appear and answer this bill, according to the usual course of this court.

And your orators will ever pray, &c.

(Signed) SAMUEL M. SHOEMAKER,
Sup't Adams Express Co.

(Signed) J. DEAN SMITH,
Solicitor of Complainants.

Sworn to by S. M. Shoemaker this August, 1868, before
(Signed) E. LYON ROGERS,
U. S. Commissioner District of Maryland.

(Signed) H. H. WELLS,
Counsel of Complainants.

NOTE.—The defendant Davison, is required to answer interrogatories 1, 2, 3, 4, 6, 7, and 9. The defendant Marbury, is required to answer interrogatories 10 and 11.

21 This can be used as a part of the record in the case of French vs. Shoemaker, in the Supreme Court of the U. S.

GEORGE W'M BRENT,
Att'y for Shoemaker.

FRED. P. STANTON,
For Ja's S. French.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for

the district aforesaid, do hereby certify that the foregoing is a true copy of a paper on file in the case of French vs. Shoemaker.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Richmond, in said district, this 3rd day of November, 1871.

[SEAL.] M. F. PLEASANTS, *Clerk.*

(Indorsement on cover:) Sup. Court U. S. 1870. Dec. term. No. 368. James French, appellant, vs. Samuel M. Shoemaker. Certiorari and agreement of counsel, &c. Filed 21 November, 1871.

SUPREME COURT
OF
THE UNITED STATES.
No. 164.

JAMES S. FRENCH, Appellant,
vs.
SAMUEL M. SHOEMAKER.

James S. French and Walter Lennox, previous to the late war, had under charters from the Legislature of Virginia and the Congress of the United States, built a Railroad from the City of Alexandria to the depot of the Baltimore and Ohio Railroad in the city of Washington. The Road was complete, except the building of a bridge across the Potomac river. During the war the Government took possession of the Road and used it for military purposes, put the Road in thorough order, and while it was so used by the Government, a bridge was built, thus making the Road complete. While the road was thus held and used by the Government, certain parties fraudulently procured a sale of the road, and under the said sale a new corporation was organized and known as the Washington, Alexandria and Georgetown Railroad Company. At the close of the war French's Company brought suit in the Circuit Court for the County of Alexandria against the Washington, Alexandria and Georgetown Railroad Company and others, to recover its road. Sometime after this suit was instituted, and while the said Circuit Court for the county of Alexandria had exclusive jurisdiction of the cause, one Horatio G. Riddle and others exhibited their bill in the Circuit Court of the

United States for the District of Virginia, and procured from the Hon. John C. Underwood, Judge, an injunction enjoining French from further prosecuting his suit then pending in the State Court—from claiming that he had any title to, or interest in the said road; and from disposing of or selling his interest in the said road.

During the pendency of the suit of the Alexandria and Washington Railroad Company vs. the Washington, Alexandria and Georgetown Railroad Company, on the 5th day of May, 1866, while the appellee, Samuel M. Shoemaker, J. Dean Smith, and Oscar H. Stevens were directors and officers and attorney of the W. A. & G. R. R. Co., and W. Jackson Phelps, an employee of said Company,—the said directors leased the said Road to the said Oscar A. Stevens and W. J. Phelps for the term of ten years.

See Record page 150—153 et seq.

Davidson, one of the Stockholders in the W. A. & G. R. R. Co. instituted a suit in November, 1866, in the Circuit Court for the County of Alexandria to set aside the said lease as fraudulent. The Circuit Court adjudged it fraudulent, and appointed Wm. H. Marbury receiver of the Road. The lessees appealed to the District Court of Appeals of Virginia in which Court the decree was affirmed—and upon further appeal to the Supreme Court of Appeals, that Court, on the 2nd day of July, 1868, affirmed the decrees of the Circuit and District Courts. In the mean time, before the month of January, 1867, while the suit of the A. & W. R. R. Co., vs W. A. & G. R. R. Co., and the suit of Davidson vs. Stevens and Phelps, lessees, were pending in the Circuit Court for the County of Alexandria, while Shoemaker, J. Dean Smith and Oscar A. Stevens were directors in the W. A. & G. R. R. Co., Stevens and Phelps its Lessees, and Smith its Attorney, while the said parties were in possession of the Road, and the appellant. James S. French was so manacled by injunction that

the suit in the Circuit Court could not be prosecuted, the said Shoemaker, Stevens, Smith, Phelps and others prevailed upon the said appellant to make an agreement to assign to the said parties more than half of his interest in the Road, upon certain stipulations and conditions. Before this contract was reduced to writing, French was called away to his home in Southwestern Virginia. Some time in February, 1867, it was reduced to writing, and was signed by all the parties but French and Phelps. When French returned and the contract was shown to him he refused to sign it, upon the ground that it was not the contract he had made, the moving consideration not being expressed in the contract.—From that time 'till December, 1867, French resisted every importunity and threat used to induce him to sign the contract.

One of the provisions of the contract was that a new company was to be organized under it as soon as there should be a decree in favor of the title of the Alexandria and Washington Railroad Company in the suit pending in the Circuit Court for the county of Alexandria. That decree was rendered at the November term, 1867. French as soon as this decree was rendered, pressed by his necessities, agreed to sign the contract upon condition that they would advance him $5,000, and carry out the contract by an immediate organization of the company. (See record, page 133.)

Previous to the making of the said contract, J. Dean Smith had, by a resolution of the Board of Directors of the Washington, Alexandria and Georgetown Railroad Company, been authorized as the attorney of said company to settle or compromise the French suit. (See record, page 150)

The appellant was not aware at the time he entered into the said agreement with Shoemaker, Smith and Stevens of their fiduciary relations to the Washington, Alexandria and Georgetown Railroad Company. (See record, page 144–160.)

By the terms of said agreement, the Alexandria and Washington Railroad Company was to be reorganized as soon as its suit against the Washington, Alexandria and Georgetown Railroad Company was decided in its favor, with a capital stock of three thousand shares. Shoemaker was to pay all the debts of the company, for

which he was to have five hundred shares of said stock. Stevens and Phelps were to contribute their unexpired lease, for which they were to have six hundred and fifty shares of the said stock. J. Dean Smith, R. T. Merrick and Geo. W. Brent were to give their professional services to the Alexandria and Washington Railroad Company, for which they were to receive, each, two hundred shares of the said stock (In the agreement the stock of R. T. Merrick was included with that of Stevens and Phelps.) (See record, page 54–110.)

After the making of said contract, Stevens and Phelps, by R. T. Merrick, their attorney, to-wit, on the 6th day of February, 1868, (having before petitioned to be made parties defendant in the suit of the Alexandria and Washington Railroad Company vs. the Washington, Alexandria and Georgetown Railroad Company et als.) filed their answer, in which said answer they swear that the Alexandria and Washington Railroad Company has no title to the road, and pray that its bill be dismissed. (See record, page 56.)

On the 22d day of November, 1867, the Circuit Court for the county of Alexandria entered a decree in the suit of the Alexandria and Washington Railroad Company vs. the Washington, Alexandria and Georgetown Railroad Company et als. in favor of the Alexandria and Washington Railroad Company. See Rec. 2. (Sup)

In August, 1868, just before the session of the Circuit Court for the county of Alexandria, at which session it was known that the said court would order the road to be restored to the possession of the Alexandria and Washington Railroad Co., in which event the said Stevens and Phelps and Shoemaker would have been deprived of the possession of the road, the said Shoemaker, Stevens, Phelps, Smith, and those acting with them, caused to be filed in the Circuit Court of the United States for the District of Virginia a bill in the name of the Adams Express Company vs. Marbury, Receiver, (*which they declare is suppplementary and auxiliary to the suit aforesaid of Riddle et als vs. the appellant French,*) denying French's title and praying that the road should be placed in the possession of Stevens & Phelps as receivers in the said suit of Adams Express Company vs. Marbury—which prayer the Court granted. See Sup. Record 3.

The Circuit Court for the County of Alexandria at the August term 1868, entered a decree, directing the W. A. & G. R. R. Co., its lessees and agents to restore the possession of the road to the A. & W. R. R. Co. From this decree there was an appeal to the Court of Appeals of Va
See Record page 8.

The appellant upon the adjournment of the Court caused an execution of possession to be issued to the sheriff of Alexandria County, by virtue of which he was placed in possession of the said road. See Record page 59.

Immediately the said Shoemaker, Stevens and Phelps, by their attorneys, Brent and Smith, had rules issued in the suit of the Adams Express Company vs. Marbury, against French to show cause why he should not be attached for disturbing the possession of the receivers, Stevens and Phelps, and the result was that Stevens and Phelps retained possession of the road.

See Sup Record 1.

Soon after the parties to the said agreement (other than French,) advertised for a meeting of the Stockholders of the A. & W. R. R. Co., to be held at the Mansion House Hotel in the said city of Alexandria.

The appellant obtained from the Judge of the Circuit Court for the County of Alexandria, an injunction restraining the parties to the contract from holding the meeting and from doing any act as stockholders under the aforesaid contract.

See Record page 167.

On the day before this injunction was obtained, the said Shoemaker gave notice to the appellant that he had filed a bill in the Circuit Court of the United States for the district of Virginia, praying for an injunction to restrain said French from interfering with the said parties in their reorganization of the Company under the said agreement, or asserting any rights in opposition to said contract except in that suit. The time at which this motion was to be heard was fixed at a day subsequent to that fixed for the meeting of the stockholders, and they disregarding the injunction of the State Court, held their meeting, divided up the appellants stock amongst themselves, and made themselves officers and directors of the Company. See Record page 2.

The said French filed his answer, in which he alleged, that the agreement had been procured from him by fraud, by oppression; that it was not mutual; that Shoemaker, Smith, Stevens and Phelps had violated their fiduciary relations with the A., W. & G. R. R. Co., and that therefore the contract was void as against public policy as well as individual honesty; that he, French, had made the contract under a mistake of facts; that the parties had not performed their part of the contract; that they violated the contract; that they were all bound under the contract to aid in sustaining the title of the A. & W. R. R. Co., and instead of doing this had labored to resist and defeat it; that they were bound to carry out that contract immediately after it was executed by him, and that they had refused to do so; that not one of the parties to it had paid any consideration for the stock they claimed; that the contract was inequitable and unconscionable.

The injunction was granted. See Record page 15. French afterwards filed a cross bill repeating the allegations of his answer, and showing the further fact that Stevens and Phelps after the contract was made filed their answer in the Circuit Court for the County of Alexandria, resisting and repudiating the French title. See Record page 47.

The case came on for hearing upon its merits, and the Court pronounced the contract valid and perpetuated the injunction. See Record page 67.

Immediately after the final decree of the Court of Appeals of Va this decree, the said Shoemaker and Smith and the other parties to the contract, moved in the suit of the Adams Express Company vs. Marbury, in which suit no proceedings whatever had been had except the rules against French, that the Receivers, Stevens and Phelps, deliver possession of the Road to the A. & W. R. R. Co., as there was no further necessity for their holding the road as receivers, and accordingly Stevens and Phelps, Receivers, delivered over the Road to Stevens and Phelps, the officers of the A. & W. R, R. Co. See Record page 80.

James S. French obtained this appeal from the said decree of the Circuit Court of the United States, for the District of Virginia, and as it appears that the facts were misapprehended, begs leave respectfully to refer in the first place to the facts as stated in the

opinion of the honorable and learned judge upon which the decree was based—the misapprehension arising doubtless because of the unusually complicated nature of the proceedings and the not less extraordinary circumstances of the case. The appellant begs leave to call the attention of the Court to such misapprehended facts as are vitally material to the questions to be considered.

1. In reference to the material fact as to who were the parties in possession of the appellants road and keeping him out of possession—the opinion reads—"It does not appear that either the complainant or any of the parties to the contract are responsible for this. He was not excluded from the possession of the road by them but by the Washington, Alexandria and Georgetown Railroad Company"

The record shows that at the time the contract was made Shoemaker, Stevens and Phelps were in possession of the road, under the fraudulent lease, Stevens and Phelps as lessees and Shoemaker as assignee of the lease—that at that very time the Washington, Alexandria and Georgetown Railroad Company was suing them to recover possession of the road These parties held possession under the lease, until that was declared fraudulent and void by the Court of last resort, and then retained possession by virtue of the order made in the suit of The Adams Express Company vs. Marbury and others appointing Stevens and Phelps Receivers.

2. As to the fact of the motive of French in entering into the contract—the opinion reads—"The old corporation had instituted suit against the new, but if successful in that suit, the two stockholders would be still without means to pay off its debts or provide for the working of the road. Under these circumstances nothing was more natural than that they should seek the co-operation of capitalists." Record page 71. *Capital was not what was most needed, but possession of the road. Once in possession, capital could be commanded. This appears from the fact that while the debts were only* $195.000 (Record p. 4 & 91) *the road was estimated at* $800,000. Record page 26. *These parties valued the road after payment of debts at* $300,000, *to-wit:* 3,000 *shares of stock at par value of* $100.

3. As to the fact of the date at which Adams Express Company filed its bill against Marbury et als—the opinion reads—"Litigation soon arose upon this lease and upon these contracts." "The Adams Express Company filed its bill about the same time or very soon afterwards." Record page 69, 148.

The Adams Express Company did not file its bill until after the lease had been declared null and void by the Court of last resort. Record page 157. This is very material. "All these suits were pending at the same time." *The Lessee suit and the Adams Express Company vs. Marbury et als were never pending at the same time.*

4. As to the time when the appellee and those acting with him were to carry out the contract the opinion reads. "It is clear that no default prior to the decree could be imputed to the complainant or to the Express Company. The contract was made on the 6th of December, 1867. The decree was rendered on the 28th of August 1868, about eight months afterwards."

The contract was made in November or December 1866, *was reduced to writing and signed by all the parties except French and Phelps in January or February*, 1867. *The decree in favor of the title of the Alexandria and Washington Rail Road Company was rendered in November* 1867. *French signed the contract a few days thereafter, on the 6th day of December* 1867. *The decree of August* 1868, *only restored possession of the road—the question of title had been settled by the decree of November*, 1867. Record page 123. Sup. Record p. 2.

5. In reference to the answer of French respecting the contract the opinion reads. "The answer of French admits the execution of the settlement contract, and that he was then and for some time afterwards satisfied with it." Record page 70.

The answer of French does not admit that he was satisfied with the contract when it was signed by the other parties—so far from it he alleges that he was dissatisfied with it and refused to sign it until after the decree of the Court for the County of Alexandria, rendered at the November term 1767, *deciding the title to the road to be in the Alexandria and Washington Railroad Company. As by the agreement it was to be carried out when such a decree should be rendered—he*

then signed the agreement with the distinct understanding that he was to have the advantage of an immediate execution of it, which execution he for months demanded of Shoemaker and the other parties in vain. Record pp. 20, 21.

French did not sign the contract until the time for carrying it into effect had come, and signed it then *because* the time to carry it into effect had arrived—and *with the understanding that it was then to be carried into effect.*

6. In reference to the object and effect of the contract the opinion reads. "It was indeed a final adjustment of controversies relating to the Washington and Alexandria Railroad Company as far as the parties to it are concerned."

The contract settled no controversy. The Alexandria and Washington Railroad Company had no controversy with Shoemaker and his associates. They did not act for the Washington, Alexandria and Georgetown Railroad Company—but for themselves. Indeed they had but little interest in that Company, though officers and directors of the same, holding altogether only 27 shares of its stock. Record page 26.

POINTS OF LAW.

This suit was brought to set up a contract.—A Court of Equity will not enforce an agreement which is liable to any of the following objections—to every one of which this agreement is liable.

1. *If there has been unreasonable delay in the party seeking the assistance of the Court.*—French having executed the contract on the 6th day of December 1867, upon the condition that the parties would reorganize the Company, upon the title of the Alexandria and Washington Rail Road Company, as decided by the decree of the Circuit Court for the County of Alexandria, rendered at the November term, 1867, and the appellee and those acting with him having accepted the contract from him with this understanding—their failure so to organize when required by French, precludes the possibility of their setting up the contract in Equity. Benedict vs. Lynch, 1 Johns, C. R. 370. Boone vs. The Missouri Iron Co., 17 How. 340. Colson vs. Thompson, 2 Wheat. 336.

2. *If there be want of mutuality* The contract was not mutual, in this to-wit: French could not have prevailed in a suit against Shoemaker, Stevens, Phelps and Smith for spicific performance of the contract. Had he instituted such suit their answer that they were directors, officers and attorney of the Washington, Alexandria and Georgetown Rail Road Company, would have put French out of Court, and as he could not have set up the contract against them they cannot maintain it against him. Benedict vs. Lynch, 1 Johns C. R. 370. 1 Maddock, Ch. 423. Atk. Title 92.

3. *If the contract is against public policy and binds a party to do what he cannot lawfully do.*—As Shoemaker, Stevens Phelps and Smith were directors and officers of the Washington, Alexandria and Georgetown Railroad Company, and Smith its Attorney charged with the duty of compromising with French for the benefit of their Company—this contract for their own benefit is against public policy because it involves a breach of trust and the violation of these fiduciary obligations in this ~~trust~~ writ: That while it was their duty to act for the Company they represented, this contract was for their personal benefit and bound them to devote themselves to the maintenance of the adverse title. 1 Mad. Ch. 411, 423.

4 *Where there has been laches or such an alteration of the property that it cannot be enjoyed according to the stipulations of the agreement.*—Stevens and Phelps besides their obligation to assist in maintaining the French title, which they violated, contracted to assign their lease—they refused to execute the contract until after they had no lease to assign—until the court of last resort had decided the lease fraudulent and void, so that they could not carry out their part of the contract. 1 Potheir 33. 1 Madd. ch. 416. Story's Eq. Sec. 141. City of London vs. Mitford, 14 Ves. 41. Morgan vs. Morgan, 2 Wheat., 290. Fildes vs. Hooker, 3 Madd. 106.

5 *If there be want of consideration.*—Merrick and Smith in their deposition state that they were not to give French any consideration for the $40,000 worth of stock they were to receive under the contract. 1 Madd. ch. 425, note 1, page 267. 1 Pothier, 42. Seymour vs. Delancy, 6 Johns C. R. 225, and cases cited

6. *If the contract was made under a mistake or misapprehension.*—French understood that Shoemaker and the other parties

were bound under the contract to aid in maintaining the French title—and to carry out the contract at the time he signed it—and if they were not so bound—he made the contract under a mistake, which avoids the contract—"Error is the greatest defect that can occur in a contract, for agreements can only be formed by the consent of the parties and there can be no consent where the parties are in error respecting their agreement" 1 Pothier 17, 18. Story Eq. Sec. 161. Bicklane vs. Gough 4 Harris and McH. 17. Graham vs. Hendren, 5 Mun., 185.

7. *If the party seeking the aid of the Court has failed to perform his part of the contract*—Not only has the appellee, Shoemaker and his associates failed to perform their part of the contract, but they have violated the contract in almost every particular of it. Witness Steven's and Phelps' answer filed by their Attorney, Merrick, in the suit of the Alexandria and Washington Railroad Company vs. the Washington, Alexandria and Georgetown Railroad Company. The course of Shoemaker, Smith, Stevens and Phelps in the matter of the Adams Express Company vs. Marbury and others—in filing the said bill and causing rules to be issued against French for taking possession of the road under the decree of the Circuit Court for the County of Alexandria. Their efforts to procure an act of Congress condemning the road on the Washington side of the Potomac River, and authorizing them to build another road (See Record page 123.) Colson vs. Thompson, 2 Wheat. 336. Harvie vs. Banks, 1 Randolph 408.

8. *If the consent of the party was not free but was obtained under duress.* "A court of Equity will enquire whether the parties really did meet upon equal terms, and if it be found that the vendor was in distressed circumstances and that advantage was taken of that distress," will not only refuse to enforce the contract at the suit of the vendee, but will set it aside at the suit of the vendor. Wood vs Abrey, 3 Madd., R. 423.

Shoemaker, Stevens, Phelps and Smith were in possession of French's property—while he was enjoined from prosecuting his suit for the recovery of it—threatening to keep possession thereof, knowing French's distressed pecuniary condition, and under these circumstances of duress and necessity obtained his signature to the contract. 1 Bay 470; 2 Bay 211; 1 Story's Eq. Sec. 239.

9. *If the agreement was to pay one for doing what he was in duty bound to do*, to-wit: A contract to pay another for restoring to the owner property in the possession of the promisee. Such a contract is not only void, but illicit. Such was this contract. 1 Porthier, pp. 43. 46.

10 *If the contract was inequitable and unconscionable.*—These parties were in possession of French's road—by confession wrongfully in possession, admitting that they had no title to a single tie in the road or a foot of ground upon which it was built—with his hands so manacled that he could neither prosecute his suit nor sell his interest, they prevail upon him to make a contract for their benefit, by which he agrees to assign to them valuable property, for which they all admit they have given no consideration, and some claim that they never intended to give any! Nay, more, not only did they procure this contract under these circumstances, but they at the same time made delusive promises and entered into fraudulent covenants, all of which they have ruthlessly violated!

The contract is certainly inequitable, unconscionable and without the least meritorious consideration. 1 Porthier 42, 43. King et als vs. Hamilton et als; 4 Peters 311. Cathcart vs. Robinson, 5 Peters 275. Colman vs. Sarrel, 1 Ves. Jr. 50.

11. *When the party seeking the aid of the Court has unfairly delayed the carrying out of the contract* "WITH THE VIEW TO SEE WHETHER THE CONTRACT WOULD PROVE A GAINING OR A LOSING BARGAIN, AND ACCORDING TO THE EVENT EITHER TO ABANDON IT OR CLAIM A SPECIFIC PERFORMANCE."

Shoemaker and his associates retained possession of the road after the decree of November 1867, under the lease—until the lease was declared null and void by the Court of last resort—and after that, they retained possession as receivers in the suit of Adams Express Company vs. Marbury and others, until the Court of appeals of Virginia finally decided the French title to be good. Up to that moment they had received all the earnings of the road, estimated at $100,000 per annum, and French had derived no benefit under the contract—and if the Court of appeals had reversed the decree in favor of the French title never could have received any—for the contract in that event could never have been carried out—The lease was gone and the Washington, Alexandria and George-

town Company would have had undisputed possession! After that decision, and not until then—Shoemaker and his associates took possession of the road under the contract. They were waiting for that decision "*with the view to see whether the contract would prove a gaining or a losing bargain.* Benedict vs. Lynch, 1 Johns C. R. 379. Alley vs Deschamps, 13 Vesey 224. Brashears vs. Gratz, 6 Wheat. 541.

12. *If the contract be tainted with fraud.*—Was not this contract tainted with fraud? Mark the gradations. Shoemaker, Stevens and Smith were fraudulently elected directors of the Washington, Alexandria and Georgetown Railroad Company.—Shoemaker, prior to May 5, 1866, Stevens on that day, and Smith soon after. On the 5th day of May, 1866, they made the fraudulent lease to Stevens & Phelps, which gave these parties possession of the road. Soon after they obtained such possession they enter into negotiations with French and Lennox which resulted in this fraudulent contract, which they have ever since fraudulently violated!

Tainted with fraud—*Polluted* would better express the fatal infection! Atk Title 98. Gibbon vs. Jackson, 10 Leigh, 364. 71 Law Library, 555. 1 Madd., ch. 416.

H. O. CLAUGHTON,
of Counsel for Apppellant.

Supreme Court of the United States.

JAMES S. FRENCH, Appellant,
vs.
SAMUEL M. SHOEMAKER. } *No.* 164.

APPELLANT'S BRIEF.

This is an appeal from a decree in chancery rendered in the circuit court of the U. S. for the district of Virginia, on a bill filed by Shoemaker against French and a cross-bill by the latter against the former, with answers, replications, and proof in both cases.

THE PLEADINGS AND ISSUES.

In his original bill Shoemaker states the organization of the Alexandria and Washington Railroad Company, and the building of the road, under a charter granted by the State of Virginia in 1854, French owning three-fourths of the stock and Walter Lennox the other fourth. That the company was embarrassed by debts amounting to about $150,000, part of which was secured by deeds of trust, and other parts reduced to judgments. That both French and Lennox went South during the rebellion; and that the Government of the United States took possession of the road and held it until some time in 1865. That during that period, certain parties made a pretended sale of the road and property of the said company under one of the said deeds of trust, and set up a spurious and fraudulent corporation called the Washington, Alexandria, and Georgetown Railroad Company; that Shoemaker, *as "superintendent, manager, and trustee of the Adams Express Company,"* made a contract with the said spurious

corporation, and agreed, among other things, to pay a debt of $60,000 due by the original company to the city of Washington. That after the making of said contract, French and Lennox, in the name of the Alexandria and Washington Railroad Company, instituted a suit in the circuit court of Alexandria county, Virginia, against the said spurious company, to recover the road and property held by the latter under the pretended sale aforesaid; and that, in the meantime, on behalf of the said Express Company, he (Shoemaker) had made contracts with O. A. Stevens and W. J. Phelps, agents of the said spurious corporation, and expended large amounts of money therefor.

The bill then proceeds to state that in November, 1866, the circuit court of Alexandria county, Va., passed an interlocutory decree in the case of the Alexandria and Washington R. R. Co. *vs.* the said pretended and fraudulent corporation, in which the court expressed the opinion that the sale aforesaid was null and void, and the said pretended corporation "without any foundation in law;" and that thereupon French conveyed to Shoemaker all his interest in and to the Alexandria and Washington R. R. Co., and its franchises and property, to secure $5,000 advanced by the latter to the former, and also as trustee for certain parties to an agreement made at the same time. (These two papers, which constitute the foundation of the whole controversy, are found in the printed transcript at pages 54, 55, and 56.) That the agreement was made by and between Shoemaker, Lennox, Brent, Stevens, Phelps, Smith, and French, and was part of the transaction by which French received the sum of $5,000. That, by the terms of said agreement, Shoemaker "was bound to pay for himself, or *on behalf of the Adams Express Company*, all the debts due by the Alexandria and Washington R. R. Co.," &c. That he did pay one debt "contracted for

—a lot over which the road runs." That he is able to pay all the rest, and ready to carry out said agreement.

That French and Lennox, sole owners of the Alexandria and Washington R. R. Co., had authorized George W. Brent to prosecute the suit in the circuit court of Alexandria county, Va., had placed in his hands the seal and record book of the company, and had invested him with exclusive authority to act for the company, without which arrangement he would not have made the contract aforesaid.

That on the 28th of August, 1868, the circuit court of Alexandria county, Va., passed a final decree in said suit adjudging that said Washington, Alexandria, and Georgetown Railroad Company had no existence, &c.

That after this decree, the parties to the aforesaid agreement, except French, met and resolved to reorganize the Alexandria and Washington Railroad Company, and appointed the 29th of October, 1868, for that purpose. That French, on the 30th September, 1868, in fraud of the said parties, executed a pretended bond of the company, as required by said decree, "*and ordered the clerk of the circuit court to issue a writ of possession, ordering the restoration of the road and property of said company, and under color of this fraudulent and illegal proceeding attempted to take possession of said road and property, notwithstanding the same was in possession and under control of this court,* (the court below,) *at the suit of the Adams Express Company, which, through your orator, was and is a party to said agreement.*" That French is determined by any fraud or violence to prevent the reorganization of the company under said agreement, and that, unless ~~sustained~~ restrained by the court, he will annoy and harass the parties and damage their interests irreparably. That Shoemaker has offered to convey to French his interest in the stock and property of the company on payment of said sum of $5,000, which French refused to do on said terms.

The prayer of the bill is as follows:

"And that said French may be restrained and enjoined from doing or attempting to do any act whatever as president of said Alexandria and Washington Railroad Company; and that he be restrained from intermeddling or *interfering* with the road and property of said company, or from intermeddling or interfering with the parties to said agreement, or your orator in carrying out the provisions thereof, or from holding any meeting for the reorganization of said company, or from taking, or attempting to take, any proceedings at law or in equity for that purpose, except by proceedings in this suit, or by attending the meetings for the purpose of such reorganization, and voting or using the interest he may have under said deed of assignment, or said agreement, if he have any, for the quiet and proper object of said meetings; and that his said interest may be sold by a commissioner of this court, appointed for that purpose, for the payment of said sum of $5,000, according to the practice of the court; and that your orator, in his own behalf, and as trustee of said parties to said agreement, may have such other and further relief as his case and their interest may require."

THE ANSWER.

The principal points relied on in the answer: French admits the demand of the $5,000, but says that when the demand was made he tendered the money to the complainant and demanded a release of the mortgage, which the complainant refused.

French states the circumstances under which the assignment and the agreement set up in the bill were executed, and claims that he was imposed upon and oppressed; that Shoemaker had verbally agreed to advance a much larger sum than $5,000 and failed to do so; that for nearly one year after the others had signed the agreement, he refused to do so, and only signed it at last under pressure of extreme necessity, and on condition that the same should be immediately carried into effect. He

alleges fraud on the part of Shoemaker, Stevens, Smith, and Phelps, because at the time of making the contract they were directors, attorneys, or agents of the Washington, Alexandria and Georgetown Railroad Company, and wholly concealed from him their fiduciary relations to that spurious organization. That on these grounds, and for want of consideration, the agreement was void and cannot be enforced. That if the agreement had been binding, the complainant and the other parties thereto could not enforce the same, because they did not carry the same into effect at the time stipulated, though the defendant frequently called upon them to do so.

The answer also admits that Mr. Brent was employed to bring the suit in the Alexandria circuit court, and that the seal of the company was left with him, but only for safe keeping. French also avers that at the time of his answer there was a regular existing organization of the Alexandria and Washington Railroad Company, of which he was himself the president, and certain persons whom he names were the directors.

The answer alleges that the lease of the road made by the spurious company to Stevens and Phelps had been declared void and annulled by the supreme court of appeals of Virginia.

To this answer there is a general replication.

CROSS-BILL.

French, in his cross-bill, sets up the same facts as in his answer, and further insists that all the parties to the agreement of December 6, 1867, are necessary parties to the proceedings in the court below; that by the agreement, Shoemaker had bound himself to pay the debts of the A. & W. R. R. Co., and that he, French, was a creditor of said company to an amount much greater than $5,000; that if the agreement had been carried out, the 20 per cent. of the net earnings stipulated to be divided

among the parties would have more than paid the debt of $5,000 out of the part due to French.

The cross-bill then charges that neither Shoemaker nor any of the other parties to the agreement have fulfilled the same, or ever intended to do so ; that Shoemaker, ever since the making of the agreement, has been acting in the interest of the fraudulent company, and not in that of the Alexandria and Washington Company ; that the very proceedings in this case were intended to prevent, and did actually prevent, the railroad from coming into the possession of the A. & W. R. R. Co., its rightful owner ; that the suit of the Adams Express Company *vs.* Davison and others had the like purpose and effect, and that the bill of complaint in that case was sworn to by Shoemaker himself. That Stevens and Phelps, the lessees of the fraudulent company, were made receivers in the last-mentioned case at the instigation of Shoemaker, and that, sixty days after they had signed the agreement now sought to be enforced they voluntarily became parties defendants to the suit in the circuit court of Alexandria county, Va., and took part against the A. & W. R. R. Co., in violation and fraud of said agreement.

French further states in his cross-bill that, notwithstanding the hardship of the agreement, he was for a long time anxious to have it carried out, and demanded that it should be ; but the parties uniformly refused. Shoemaker has not paid the debts of the company, but has encouraged litigation, and thereby increased the debts, instead of satisfying them.

That the stock agreed to be assigned to Smith, Brent, and Merrick was in consideration of their professional aid, which they have not only failed to render, but have actually advocated the adverse rights of the spurious company; that the lease to Stevens and Phelps, which was to have been assigned under the agreement, has been annulled by the courts, and that thus the whole consideration for the

stock stipulated in the agreement to be allotted to said Stevens and Phelps has failed; that notwithstanding the utter failure of consideration for said agreement, and the refusal of the parties to carry it out, the said parties, under color of said agreement, have usurped the organization of the Alexandria and Washington Railroad Company, electing Shoemaker president, and Smith, Stevens, Brent, and Merrick directors.

That Shoemaker for several years past has been receiving a large part of the earnings of said road, and that French, as owner of three-fourths of the stock, is entitled to recover three-fourths of the same, which he proposes to set off against the debt of $5,000; that in 1868 he tendered the $5,000, with interest, to said Shoemaker, and demanded a reconveyance of his property in said road, which was refused.

The cross-bill prays—

"That an account may be taken of the earnings of said road at any time received by the said Shoemaker; and that upon payment of said sum of $5,000 and interest, the said Shoemaker may be required to reconvey to your orator the property in said road, being three-fourths of the whole, and that *the whole agreement may be cancelled and annulled so far as the said Shoemaker is concerned, and with regard to all the other parties thereto, if they shall be made defendants to the original bill;* and that the said Shoemaker may be enjoined and prohibited from acting as president of the company under the fraudulent election and organization aforesaid, and that the other parties to said agreement, if made parties to the original bill, may be prohibited and enjoined from acting as directors by virtue of said pretended election; and that your orator may have such other and further relief as the exigencies of the case may require."

THE ANSWER TO THE CROSS-BILL.

In describing the answer, it is sufficient to say that it takes generally the same grounds assumed in the original

bill, and denies all the material allegations of the cross-bill. Shoemaker denies that he has received any money from the said road to which French has any claim; but admits that, as trustee of the Adams Express Company, he has received money from the earnings of said road, and alleges his readiness to account for it to those having a right to call on him.

To this answer there is a general replication.

THE DECREE.

The decree was in favor of Shoemaker, and perpetuated the injunction which had previously been granted. It is found at page 66 of the printed transcript.

ARGUMENT ON THE ISSUES AND PROOFS.

THE TENDER.

The proof shows that on the 10th of October, 1868, French tendered to Shoemaker the $5,000, with interest. (Transcript, pages 90, 103, and 141.) But French demanded the reconveyance of his whole interest in the road, while Shoemaker proposed to surrender only so much as French could claim under the contract, supposing that to be binding. The effect and operation of this tender are therefore wholly dependent on the other points in the case, and need not be considered apart from them.

THE MAIN POINT IN THE CASE.

The court below erred in setting up and enforcing the agreement of December 7, 1867, (Transcript, pages 54 and 55,) by means of the injunction which it granted and perpetuated. The injunction is, in effect, equivalent to a decree for a specific performance.

Under all the circumstances of this case, a court of equity cannot lend its aid to Shoemaker to enforce the agreement against French, because, at the time of making

it, Shoemaker was not in a condition to carry it out in good faith ; he did not intend to carry it out fairly, and, in fact, he did not execute it at the time when, by the terms of the agreement, he was bound to do so. There was not only failure on his part, but there has been palpable fraud and wrong throughout the whole transaction. If these facts are established, there will be no need of authorities to induce this court to reverse the decree of the court below.

1st. Shoemaker, with his associates in the contract, Smith, Stevens, and Phelps, all held official relation with the W., A. and G. T. R. R. Co., which was antagonistic to the A. and W. Co. (For the sake of brevity in this argument the former will be called the SPURIOUS COMPANY, and the latter the RIGHTFUL COMPANY, for both parties in this proceeding agree to this designation.) That Shoemaker was a director in the spurious company is very clearly shown in the brief of Mr. Claughton. In addition to his references, see the decree of the Virginia court, at page 158 of the transcript. This decree was rendered in July, 1868 ; it dissolved the injunction against Shoemaker, Stevens, and Smith, *as directors and officers* of the spurious company. Reference is made to this in the bill of the Adams Express Co. *vs.* Davison *et al.*, 5th paragraph on page 8 of the answer to the *certiorari*, the supplemental transcript in this case. These relations of the parties were wholly concealed from French at the time of his contract with them.

2d. But it is not from this fraudulent concealment that the most important inference is to be drawn in this argument. In the 7th and 8th sections of the original bill (pages 3 and 4) it is shown that Shoemaker and the Express Company were largely involved with the spurious company, were in fact in possession of the road and enjoying its whole earnings, and were deeply interested in

maintaining the then condition of things. This is more fully shown by the copy of the bill in the case of the Adams Express Company *vs.* W. H. Marbury and others, which is found in the answer to the *certiorari*, (pages 3 to 10,) and which is referred to in the 8th section of the original bill in this case. It is very obvious that it was not the interest of Shoemaker that the road-property should be taken from the spurious company and given to the rightful company. It would have been to take it out of his own hands, and he was evidently not ready for that important change. The decree of November 23, 1867, (see return to *certiorari*, pp. 2 and 3,) had been rendered, and that of August 28, 1868, (transcript, p. 8,) was just about to be, if it had not already been rendered, when the bill of the Adams Express Co. *vs.* Davison *et al.* was exhibited in the court below, for it appears that this was filed some time in August, 1868.

3d. The most extraordinary proceeding, however, was that initiated in this very case. The bill was filed and the preliminary injunction granted on the 27th October, 1868, just two months after the decree of the Virginia court, ordering the restoration of the railroad property by the spurious company to the rightful company. French, as the president of the rightful company, had obtained a writ of possession, and had actually been placed in possession of the road when the injunction in this case was granted.

Now, it is plain from the 19th section of the original bill (page 6) that the chief object of the injunction prayed for was to prevent French, as president of the rightful company, from getting control of the road. This company could only come into possession of the road and property which had been decreed to it by and through its officers—its president and directors. French was at that time unquestionably the president, for he had

conducted the suit in the circuit court of Alexandria county to a successful termination, and no other board except that of which he was president had yet been organized. It was not until after the injunction in this case had been granted that the parties to the contract, viz, Shoemaker, Stevens, Phelps, Smith, Brent, and Merrick, usurped the organization of the company (as I maintain) and elected themselves president and directors.

The injunction in this case, though nominally against French individually, was really against him as president of the company, and was in effect an injunction against the rightful company, which was not made a party to the proceeding. It prevented the rightful company from enjoying the benefit of the decree rendered in its favor by the circuit court of Alexandria county, Virginia. It kept the rightful company out of the possession of its road and property; and that was evidently the very purpose and object sought to be accomplished by means of the original bill and the injunction granted under it.

If this be not so, why did not Shoemaker let the property go into possession of the rightful company under the writ of possession, and then accomplish the reorganization of the company under the contract with French? That contract was intended to secure the possession of the road to the rightful company, and it was bad faith in Shoemaker to do anything whatever to prevent that result.

In the 13th paragraph of the original bill, Shoemaker asserts that French and Lennox, the owners of the road, had surrendered the seal of the company to Mr. Brent, and made him the trustee of the whole organization. But this statement is denied in the answer, and wholly disproved by the deposition of Mr. Brent himself, as also by that of Mr. Lennox, (pp. 91, 147, and 161.) Brent was employed as attorney to bring the suit in the Alexandria circuit court, and the seal was left with him only for safe-

keeping. The company could scarcely have been dissolved by this disposition of the seal, especially as it was at that very time commencing a suit to assert its corporate rights and recover its property.

This effort to show that the company had been dissolved, or, at least, that its powers had been transferred to Mr. Brent, its attorney, evinces the difficulty of framing the original bill so as to accomplish its obvious purpose, which was to prevent the immediate execution of the decree of the Virginia court. Shoemaker was at that time so involved with the spurious company that he was evidently not prepared to fulfil his contract with French; and he resorted to the injunction in this case to enable him to hold on to the road under the title of the spurious company. His connection with this company had been concealed from French at the time of this contract. This was a gross fraud at the very inception of the business, as already stated; but this fraud was carried out and completed only by means of the injunction in this case, as will more fully appear in the sequel.

4th. The suit of the Adams Express Co. *vs.* Davison, Marbury, and others, was commenced in August, 1868, long after the contract of December 6, 1867, had been made. The bill was sworn to by Shoemaker, with J. Dean Smith as his solicitor. In paragraph 11, (answer to *certiorari,* p. 9,) this bill declares that it was only a supplement and auxiliary to the Riddle suit in the same court; and the object of this, it is stated in the same clause, was to enjoin French from prosecuting the suit in the circuit court of Alexandria county to recover the road for the rightful company. Thus, in August, 1868, Shoemaker, with his solicitor, J. Dean Smith, also one of the parties to the contract now in dispute, filed this bill in the name of the Adams Express Co., for the purpose of embarrassing and defeating the title of the rightful com-

pany, which they had expressly agreed by this contract to maintain. And, throughout the whole bill, it is plain that the right and title of the spurious company is asserted and maintained, while that of the rightful company is wholly ignored. (See paragraphs 2 and 11, pp. 4 and 9, of the answer to *certiorari*.)

It is true this bill is in the name of the Adams Express Company, but in the 19th paragraph of Shoemaker's original bill (Transcript, p. 6) he asserts that the Adams Express Company "was and is a party to said agreement"—that is, the agreement in the present case. So that the Express Company, through the agency of Shoemaker and Dean Smith, also parties to the agreement now in contest, did, as early as August, 1868, institute proceedings in absolute hostility to the said agreement, which Shoemaker now, for himself and for all the other parties, seeks in this case to set up and enforce. In my humble judgment, a more iniquitous proceeding was never instituted in any court of justice.

5th. By the fourth clause of the contract (page 55) it was "to be carried into effect on the rendition of the decree of the circuit court of Alexandria county." The 16th clause of the bill (p. 5) states this decree was rendered on the 28th of August, 1868. But, in fact, an absolute, though not a final, decree was rendered by that court on the 23d of November, 1867. (See the return to the *certiorari*, pp. 2 and 3.) This was a few days before the date of the contract, which is the 6th of December, 1867. Now, it is admitted on all hands, and proved by all the witnesses, that the contract was drawn and signed by most of the parties nearly a year before its date. It was made in contemplation of a decree, which was expected at the time the contract was reduced to writing. The decree of November, 1867, fully answered the terms of the contract, for it absolutely settles the rights of the rightful

company, and adjudges the organization of the spurious company to be null and void. That this was the understanding of the parties is plain from the statements of Mr. Stevens in the affidavit made by himself in 1868, and attached to his deposition in this case, (pp. 133, 134.) French signed the contract with the understanding that it would be immediately carried into effect in conformity with the decree of November, 1867.

French asserts, in his cross-bill, that he was willing, notwithstanding the hardship of the contract, to abide its terms, if Shoemaker and the other parties had been disposed to execute it on their part. He says he repeatedly urged Shoemaker to do so, but that the latter wholly refused. It is true Shoemaker denies this in his answer to the cross-bill ; but French proves it in his deposition, and Lennox testifies to the same fact. (Pp. 146 and 160, answer to 10th interrogatory.) Brent also virtually proves it in his deposition. (Transcript, p. 94, answer to 26th question.) Notwithstanding Shoemaker's denial, it is plain from the whole case that French was anxious to get the road into the possession of his company and to have its debts paid ; it is equally plain, not only from the testimony of witnesses, but also from the matters of record already shown, that Shoemaker was so involved with the spurious company that he did not desire to execute his contract with French until he should be compelled to do so. He has never, to this day, settled any considerable portion of the debts he assumed for the company ; and it was not until two years after the final decree of the Virginia court that he would allow the rightful company to get possession of its property. During all that time he held the road in possession of the spurious company by means of the suit of the Adams Express Company *vs.* Marbury and others ; and only when, in 1870, the supreme court of appeals of Virginia affirmed the decision of the circuit court in Alexandria, did he let go his hold of

the road which he held in the name of the spurious company. Then he moved the court to discharge the receivers in the suit of the Adams Express Company, and the road with all its property was immediately remitted to him as president of the company organized under his contract with French—the contract in this case. But during all this time French, who is acknowledged to have owned three-fourths of the property, has not received one dollar from the earnings of the road; while Shoemaker, first by right of the spurious company, and then under his contract with French and by right of the true and rightful company, has held the road and appropriated all its earnings to himself and his associates.

On these facts, without further comment, it is insisted that Shoemaker has acted so fraudulently, and has so persistently refused to execute the contract as he was bound to do, that he cannot now be heard in a court of equity to claim the benefit of it.

THE OTHER PARTIES TO THE CONTRACT, VIZ: SMITH, BRENT, STEVENS AND PHELPS, AND MERRICK.

6th. It was urged in the bill, and insisted at the hearing in the court below, that these gentlemen were all necessary parties to the proceeding. They are parties to the contract, and it is for their benefit, as well as for his own, that Shoemaker instituted the suit in this case. On page 6 he expressly says that he sues "in his own behalf, and as trustee for said parties to said agreement." He has assumed to parcel out the stock of the company in accordance with the terms of the agreement, and to organize the company upon this issue of the stock. Neither Smith, Stevens, Phelps, nor Merrick have done anything whatever under said agreement, except to aid in thwarting and postponing its operation; and yet they are all invested with their shares in the company, are made directors, and are now receiving dividends under their contract with

French, while he is excluded from all participation either in the control of the road or the enjoyment of its earnings.

In the original bill, Shoemaker assumes to act as trustee for these gentlemen, and he sues for their benefit as well as his own. It is impossible to deny that the injunction prayed for and granted by the first decree establishes against French the claims of all the other parties to the contract. Indeed, this point was so adjudged at the last term of this court, on the motion for a supersedeas.

Now, if the rights of these gentlemen can be adjudicated in this case without their being made parties, (which we utterly deny,) certainly we will be permitted to examine the proofs and ascertain whether they are entitled to claim the benefits of the contract between them and French. Shoemaker has undertaken to decide this question in their favor. He has assigned to them the stock stipulated in the 4th clause of the contract, (page 55,) without hesitating for a moment to consider whether they have performed their part of it or not. He decides for himself at the same time, because, although he is trustee for the others in so far as he holds the legal title, he is himself a party to the contract, and standing in that respect upon an equal footing with them.

It is now insisted that each one of these gentlemen has so far failed in the performance of the contract, and, indeed, has acted so unfairly and oppressively, not to say fraudulently, that neither one of them can justly claim to have the contract enforced.

The truth of this statement in the case of Messrs. Stevens and Phelps is perfectly plain. On the 4th of February, 1868, just sixty days after the date of the contract with French, they went into the circuit court of Alexandria county and voluntarily made themselves parties defendants to the suit there pending between the rightful company and the spurious company. They filed the answer, which is found on pages 56, 57 of the printed tran-

script, in which they utterly deny the title of the rightful company, and ask that its bill be dismissed. By the contract which they, through Shoemaker, seek to enforce in this case, they claim under the very title which by their said answer they sought to defeat and destroy. Surely, it would be a monstrous violation of all reason and right if these gentlemen should be permitted thus to oppose and resist the object of a contract, and afterward, when defeated in that effort, to come into a court of equity and claim the benefit of it. Mr. Merrick, as the solicitor of Stevens and Phelps, is implicated with them in this proceeding.

The Chief Justice in his opinion (page 73) fully recognizes the force of this argument, for he says: "If they did in fact, directly or indirectly, attempt to defeat the title of the Washington and Alexandria Railroad Company, or the rights of the original stockholders as recognized in the contract, that may be good ground for denying to them the benefits of the contract."

Again, by the 2d clause of the contract, (page 54,) Stevens and Phelps agreed to assign to the rightful company, for the benefit of the parties to the contract, the lease of the road which they held under the spurious company. The object of this stipulation was to enable the rightful company to get immediate possession of the road on the rendition of the decree in its favor. But this lease was soon afterwards adjudged by the courts to be absolutely void. (See pp. 57, 58, 59.) Stevens and Phelps had no lease to assign, and thus the only consideration they were to give for the stock, which by the contract was to be awarded to them, entirely failed. There is nothing else in the contract constituting any consideration on their part.

As to the other parties, Messrs. Brent and Smith, the latter was of counsel in the case of the Adams Express Company *vs.* Marbury and others, while both of them

have sustained Shoemaker in all his litigation with French, the whole object of which, as already shown, was to prolong the possession of the road in the hands of Stevens, Phelps, Shoemaker, and the Adams Express Company, holding, as they did, under the spurious title of the Washington, Alexandria and Georgetown Railroad Company.

Mr. Brent was originally employed by French to institute the suit for the recovery of the road in the circuit court of Alexandria county. He subsequently seems to have acted in the interest of Shoemaker and in hostility to French. In his deposition (p. 92) he states some facts which show the disposition of himself and Shoemaker to prolong the litigation in the Virginia courts, so as to enable Shoemaker to hold on to the road under his contract with Stevens and Phelps. It was necessary to pay certain costs in the district court of appeals in order to get the case heard. Shoemaker refused to pay these costs as he ought to have done, and French was compelled to pay them to prevent the delay of another term.

In truth, it is plain that all the parties, Shoemaker, Stevens, and Phelps, Smith, Brent, and Merrick, were combined together in this effort to prevent the rightful company from getting the immediate possession of its property. The litigation in this case was continued more than two years after the writ of possession had been issued by the Alexandria circuit court, before the parties thus litigating with French would allow that writ to have its proper effect of restoring the road and property to the rightful company. That this delay, so utterly ruinous to French in his impoverished condition, was wholly unnecessary, is apparent from the fact that when these parties got ready to make the movement, they went into the court below and moved to discharge the receivers in the case of the Adams Express Company, and had the property turned over to themselves as the president and directors

of the Alexandria and Washington R. R. Co., they having constituted themselves such under their agreement with French.

Stevens and Phelps were the receivers in the case of the Adams Express Co., and when discharged as such by order of the court in that case, they remained in possession "as general managers and superintendents," under the 5th clause of the agreement in this case. The two suits pending in the same court were carried on for the convenience of Shoemaker and his associates, to enable them to hold the road and enjoy its earnings, either under the spurious or the rightful title, as might best suit their interests.

7th. The proceedings in this case, as well as in that of Riddle and others, and in that of the Adams Express Company, have not been more palpably unjust and oppressive against French than they have been violative of all the well-settled rules of law applicable to such cases. All of them have inaugurated an unjustifiable interference on the part of the Federal courts with proceedings instituted in the State courts, of which the latter had first taken jurisdiction, with an undeniable right to maintain it. Both the Riddle case and this case did, by indirection, seek to embarrass the Alexandria and Washington Railroad Company in the suit instituted to recover its property by enjoining the president of the company, without making the company a party. All three of the cases have had no other effect than to protract and prolong the litigation, while Shoemaker, Stevens, and Phelps were holding the railroad property under the spurious title, adverse to that which these parties and their associates sought to acquire from French by the agreement in this case.

Diggs *vs.* Wolcott, 4 Cr., 179.

McKim *vs.* Voorhes, 7 Cr., 279 ; quoted in 2d Story's Equity, § 900.

8th. Finally, it is in character with this whole litigation and all its results that the decree in this case goes beyond all precedents, by assuming to settle questions as to parties who were not before the court. No instance can be found in which a contract of this kind has been enforced, either by decreeing a specific performance or by injunction, when any one of the joint contractors had been omitted in the proceedings. This is not a case in which the *cestui que trust* can be ignored. It is indispensable for him to be made a party. The general doctrine on this subject is to be found in Story's Eq. Pl., §§ 159 to 161, and 207, *et seq.*

1 Daniel's Ch. Pl. and Pr., 182, 184, 250, 251.
Morgan's heirs *vs.* Morgan, 2 Wheaton, 290.
Conn. *vs.* Penn., 5 Wheaton, 424.
Sims *vs.* Guthrie, 9 Cranch, 19.
Shield *vs.* Barrow, 17 How., 130.
Coirson *et al. vs.* Millaudon, 19 How., 113.
Hoe *vs.* Wilson, 9 Wall., 501.

FRED. P. STANTON,
For the Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1871.

JAMES S. FRENCH, APPELLANT,
vs.
SAMUEL M. SHOEMAKER. } *No.* 164.

Appeal from the Circuit Court of the United States for the District of Virginia.

BRIEF OF COUNSEL OF APPELLEE.

ABSTRACT OF THE PLEADINGS.

The complainant's bill sets out—

That in 1854 Virginia chartered a company to construct and carry on a railroad from Alexandria to Washington.

That the only stockholders were the appellant, James S. French, and Walter Lennox, the former for three-fourths, the latter for one-fourth, of all the shares.

See Rec., p. 2, foot.

That soon after the organization of the company it became indebted to the extent of $150,000, for which the company gave deeds of trust.

See Rec., p. 2, foot, p. 3, top.

That on the breaking out of the rebellion, French and Lennox, the only two stockholders, went into the insurgent lines, and the road was taken possession of by the military forces of the United States, and retained until 1865.

That during this absence of French and Lennox, certain parties, by illegal and fraudulent practices, got pos-

session of the road, and under the color of the code of Virginia organized a pretended corporation—the Washington, Alexandria, and Georgetown Railroad Company.

See Rec., p. 3.

That the complainant, being manager of Adams Express Company, found it to the interest of the company to agree, on certain conditions, to pay, on behalf of the Washington, Alexandria, and Georgetown Railroad Company, to the city of Washington, a debt of sixty thousand dollars, being one of the debts of the Alexandria and Washington Railroad Company for which a deed of trust had been given on their road, as above set forth, and to which corporation the Washington, Alexandria, and Georgetown Railroad Company pretended to have succeeded.

See Rec., p. 3.

But after this agreement to pay the $60,000, complainant was informed that James S. French and Walter Lennox had brought suit in the circuit court of Alexandria county, Va., in the name of the Alexandria and Washington Railroad Company, to set aside the sale of their road and have declared void the corporation founded on said sale of the Washington, Alexandria, and Georgetown Railroad Company.

Rec., p. 3, foot, and 4, top.

That in November, 1866, the circuit court of Alexandria county, Va., in an interlocutory decree in said suit, expressed an opinion that the sale under which the Washington, Alexandria, and Georgetown Railroad Company pretended to hold its rights was null and void; upon which James S. French, the appellant, sold and conveyed all his right, title, and interest in and to the said Alexandria and Washington Railroad Company, and its fran-

chise and property, to secure the sum of $5,000, paid him by complainant; and Lennox, the other stockholder, also conveyed to complainant all his interest in the said railroad and property.

See Rec., p. 4.

That by said agreement complainant became bound, on his own behalf and that of Adams Express Company, to pay all the debts of the Alexandria and Washington Railroad Company, and all such as had been contracted by Stevens and Phelps as agents of the Washington, Alexandria, and Georgetown Railroad Company. The debts of the former were reported by a commissioner to be $195,000.

See Rec., p. 4, foot.

That by an agreement referred to in the one above mentioned, it was provided that on a decree being had in the circuit court of Alexandria county, Virginia, in favor of the Alexandria and Washington Railroad Company, there should be a reorganization of the company; and in the meantime there was no officer of the company authorized to act.

That on the 28th day of August, 1868, the said court made a final decree in favor of said French and Lennox and said Alexandria and Washington Railroad Company against the Washington, Alexandria, and Georgetown Railroad Company, declaring that the latter had no legal existence.

See Rec., p. 5.

That after said decree, Lennox, who had acted as secretary of the company, called a meeting of the parties to the agreement, when it was determined to reorganize the company, and on 26th September, 1868, the parties to the agreement met, ordered notices to be given, according to the laws of Virginia, of a meeting for the purpose of re-

organizing the company, to be held on the 29th day of October, 1868.

See Rec., p. 5, foot, and 6, top.

That in violation of said agreement and of the rights of complainant and those whom he represents, the said French, on the 30th September, 1868, in fraud of complainant, executed a pretended bond, as if of the Alexandria and Washington Railroad Company, and ordered the clerk of the circuit court of Alexandria county, Virginia, to issue a writ of possession ordering the restoration of the road and property of said company, and under this fraudulent and illegal proceeding was attempting to take possession of the said road, although the same was in the custody of the circuit court of the United States in Virginia in another suit.

See Rec., p. 6, middle.

That complainant has offered to convey to French his interest in the stock and property of said company on his paying the $5,000, which he has refused to do.

Rec., p. 6, foot.

The bill prays that the said James S. French may be restrained from doing any act whatever as president of the Alexandria and Washington Railroad Company; from interfering with the road and property of said company, or with the complainant and the parties to the agreement, in carrying out the provisions thereof and in organizing the new company, or from taking any legal proceedings for that purpose; and prays further, that French's interest may be sold by a commissioner of the court for the payment of the said sum of $5,000, according to the practice of the court.

See Rec., p. 7.

ANSWER.

To this bill the defendant, French, answered on 26th November, 1868.

See Rec., p. 17.

The answer admits the charter by Virginia of the Alexandria and Washington Railroad Company.

Admits that he and Lennox owned the stock, but denies that he (French) has ever sold his stock or interest in the road.

Admits that he and Lennox went into the Confederate lines, and that certain persons in their absence obtained illegal possession of the road, and set up a new corporation, called the Washington, Alexandria and Georgetown Railroad Company.

See Rec., p. 17.

He admits that Exhibit No. 1, filed with complainant's bill, is a true copy of the paper executed by him (French) to complainant, Shoemaker, but denies it was made for the purposes stated by complainant.

N. B. The Exhibit No. 1, filed with complainant's bill, does not appear on the pages immediately following the bill in the record, but it appears as Exhibit F to French's answer.

See Rec., pp. 40 and 41; also at pp. 55 and 56 of the record.

He admits he had notice of and was present at the meeting referred to in Exbibits S, M, S, No. 4, of complainant's bill.

See Rec., p. 18, top.

The exhibit referred to is found at pages 11 and 12 of the record.

Admits that complainant demanded payment of $5,000, for which, he says, complainant pretends he executed a

mortgage on his (defendant's) interest and estate in the railroad, but that he tendered complainant the amount and the latter refused to receive it.

See Rec., p. 18, top.

And further the respondent says:

That after the close of the war, he, as president of the Alexandria and Washington Railroad Company, employed G. W. Brent, attorney-at-law, to bring suit to recover the road; said suit was brought in March, 1866; that he deposited the seal of the company with Brent for safe keeping; that during the pendency of said suit the complainant, being a director of the Washington, Alexandria and Georgetown Railroad Company, was elected treasurer thereof; that J. Dean Smith, the attorney of the company, was also elected a director; and O. A. Stevens, the general agent of the company, was also elected a director; that during the same time the Washington, Alexandria and Georgetown Railroad Company made a lease of the road for ten years to O. A. Stevens and W. J. Phelps; that soon after one Davison brought suit in the Alexandria county circuit court to annul said lease; that G. W. Brent defended said suit for Stevens and Phelps; that the said lease was declared void by a judgment of the said court, which was affirmed on appeal.

See Rec., p. 18.

That respondent, under the advice of Brent, conferred with Stevens, Phelps, and J. Dean Smith, and the complainant, for the purpose of making arrangements to raise funds; that all the parties, including respondent, had a meeting at the office of R. T. Merrick; that prior to said meeting complainant had made a contract to pay the debts of the company, including $60,000 to the city of Washington; that it was proposed at said meeting that respondent and Lennox, who owned all the stock of the

Alexandria and Washington Railroad Company, should assign to the said parties a majority of the stock of the Alexandria and Washington Railroad Company, to be distributed among them in certain proportions; that Stevens and Phelps would assign to the Alexandria and Washington Railroad Company their lease of the Washington, Alexandria, and Georgetown Railroad Company; that the complainant would advance money to relieve the road from debt, and advance large sums of money to respondent and to Lennox—to the former not less than $20,000; that respondent did not then know that complainant, Smith, and Stevens, were directors of the Washington, Georgetown, and Alexandria Railroad Company, or that Smith was the attorney and complainant the treasurer of it, and that the proposal they made to him was a fraudulent betrayal of their trust to the said road; that before the proposal was reduced to writing respondent was compelled to leave for Virginia.

See Rec., p. 19.

That he returned in January or February, 1867, when the contract referred to in the bill, and signed by complainant, Stevens, Smith, Brent, and Lennox, was handed to him; respondent declined to sign it on the ground that it was not in accordance with the verbal agreement; that he was then threatened by Stevens to be kept out of the road for years by litigation; and being thus situated, and after nearly a year, respondent signed the contract on condition that complainant would advance him $5,000 and carry the contract immediately into effect.

That at the same time respondent excuted a mortgage upon his interest in the road to secure the $5,000; he avers his signature to contract was obtained by fraud and oppression; that it was against law and public policy, and null and void; that it was on its face without consideration, and drawn in order to defraud respondent.

See Rec., p. 20.

That he believes complainant has never paid out of his own means any debt for which the road is liable; that he believes the $5,000 lent came from the funds of the Washington, Alexandria, and Georgetown Railroad Company.

That there is an effective organization of the Alexandria and Washington Railroad Company; that respondent is the president, and that on the 9th October, 1868, the board of directors ordered the president to demand from Brent the seal of the company, and discharge him as attorney thereof.

See Rec., p. 21.

This answer was made in November, 1868.

See Rec., p. 22.

On 13th May, 1869, the respondent, James S. French, filed an affidavit and petition for leave to make new parties and file a cross-bill, which was allowed.

See Rec., pp. 46 and 47.

The said cross-bill recapitulates the features of complainant's bill and of the answer.

See Rec., p. 47 to 49.

The allegation of the cross-bill commences on the latter page.

French says therein that the two instruments set out in the original bill, viz, the conveyance by French to Shoemaker and the agreement made between Shoemaker, French, Lennox, Brent, Stevens, Phelps, and Smith, are so connected as to constitute in law but one instrument; and that all of said persons should have been made by Shoemaker parties to his bill.

That by the agreement Shoemaker is bound to pay the debts of the Alexandria and Washington Railroad Company; that French is a creditor in the sum of $50,000,

and by the agreement, if carried out, Shoemaker was bound to pay him.

See Rec., p. 49.

That by said agreement twenty per cent of the earnings of the road were to be divided among the parties; that French's portion amounts to more than $5,000; and had the agreement been carried out, his debts to Shoemaker would have long since been paid.

That since said agreement Shoemaker has not fulfilled his obligation in any respect, and has been acting in the interest of the Washington, Alexandria, and Georgetown Railroad Company.

That the truth of these charges appears from the suit of Adams Express Company *vs.* Davison, Marbury, and others, in the United States circuit court in Virginia.

That in said suit Shoemaker had the road placed in the hands of O. A. Stevens and J. W. Phelps as receivers, and have kept possession in hostility to the interests of the Alexandria and Washington Railroad Company, and that these three persons—Shoemaker, Stevens, and Phelps—have applied to Congress to charter a road over the same line, all in fraud of his rights.

French charges that Shoemaker has failed to pay the debts of the company, protracted its litigation, and evaded the performance of his agreement.

See Rec., pp. 50, 51, and 52.

French propounds interrogatories to Shoemaker, the complainant, which are found on Rec., p. 53.

To this cross-bill Shoemaker, the original complainant, filed his answer in September, 1869.

He avers that his original bill states fully and truly the circumstances under which the contract and assignment alleged in the original bill were made; denies that

there was any other money consideration than the $5,000 mentioned in the conveyance promised to French; denies that French is a creditor of the company for $50,000, or any other sum; denies that he has failed to carry out the contract.

See Rec., p. 62.

He avers that, after due notice to French, he, Shoemaker, and the other parties to the agreement, reorganized the Alexandria and Washington Railroad Company, and that he, Shoemaker, was elected president, and that prior to said reorganization the company were not represented, and specially that French had no authority to represent it.

See Rec., p. 63.

To the special interrogatories, he says:

That French freely and voluntarily made an offer to convey his interest in the road.

That he was informed and believed French was not a creditor but a debtor of the company.

Rec., p. 63.

That he did apply to Congress for a charter, but that he did so in the interest of the parties to the agreement.

That he paid the only debt against the company fairly ascertained, and that far from appealing Messrs. Towle, Snowden & Co.'s judgment, it was they who appealed.

That he has paid nothing to Smith, Brent, or Merrick to sustain the fraudulent company, but done all in his power to crush it.

That he has received and disbursed a part of the earnings of the road, and is ready to account to the proper parties, but that French has no interest in them.

See Rec., p. 64.

French files replication, (see Rec., p. 64, foot,) and the case being at issue, the parties proceeded to take testimony.

The circuit court passed a decree in favor of the complainant, enjoining James S. French from any use of the name or title of "president of the Alexandria and Washington Railroad Company" under any election to that office heretofore held, and enjoining him from any action by himself or his agents interfering with any proceeding for the reorganization of said company under the contract mentioned in the bill, and dated 6th December, 1867, reserving his, French's, right to stock reserved to him in the new company.

See Rec., pp. 66 and 67.

See, also, Opinion of the Chief Justice, Rec., pp. 67 to 75.

From this decree the defendant, French, has appealed.

The counsel for complainant and appellee submits there is no error in the decree of the court below, and also submits the following

STATEMENT OF FACTS

as found in the record:

1. On the 27th February, 1854, the General Assembly of Virginia passed an act to incorporate a company to construct a railroad between Alexandria and Washington city.

See Rec., p. 30.

2. All the stock of the company was taken by James S. French, three-fourths, and Walter Lennox, one-fourth.

See complainant's bill, Art. 2, Rec., p. 2, and French's answer, Art. 2, Rec., p. 17.

3. That on the breaking out of the rebellion, or soon after, both French and Lennox left Alexandria to go into

the lines of the insurgents, and deserted the railroad, which was made use of by the United States for military purposes.

See French's answer, Art. 3, Rec., p. 17.

4. That on the 16th July, 1859, a deed of trust had been executed upon the road, its franchises, rights, and appurtenances, to secure certain bonds of the company, payable to Walter Lennox or bearer, and making him trustee.

See deed of trust, Rec., pp. 31 to 34.

5. That during the absence of French and Lennox within the insurgent lines, and on the 3d day of February, 1862, one Joseph Davison presented a petition to the county court of Alexandria county, Virginia, alleging himself to be the agent and attorney of all the bonds and bondholders in the aforesaid deed of trust; that Walter Lennox was incapacitated from acting as trustee, and praying the appointment of Joseph B. Stewart in his place.

See Rec., p. 31.

6. That the county court of Alexandria county, Virginia, removed Lennox from the trust, and appointed Stewart in his place, (see Rec., p. 37,) and that Stewart, as substituted trustee, sold the road and everything belonging to it to Hay and Thornton, on the 10th April, 1862.

See Rec., pp. 35 to 39.

7. That the said Hay and Thornton, and others associated with them, organized a new railroad company, called the Washington, Alexandria and Georgetown Railroad Company, which, from the date of said sale to Hay and Thornton, conducted the business of the road; but when

James S. French and Walter Lennox, after the fall of the rebellion, came back to Alexandria, they brought suit in the name of the (first company) Alexandria and Washington Railroad Company against the (second company) Washington, Alexandria and Georgetown Railroad Company to set aside the sale made by Stewart, the substituted trustee, and have the incorporation of the second company declared to be null and void ; in which they were successful, both in the first instance and on appeal, obtaining a decree as prayed for, and thus the old company was reinstated and the new company annulled, at August term, 1868.

See bill of complaint in circuit court of Alexandria county, Virginia, and the allegations on pp. 42, foot, and 43, top of this record ; also French's answer to bill, Rec., p. 18.

8. That when French and Lennox returned to Alexandria, as above stated, they were both very needy, and so deeply in debt as to foresee they would be without the means to carry on the railroad on getting a decree in their favor, as they hoped to do.

See French's answer, Rec., p. 19, top.

See French's answer to interrogatories, Rec., p. 143, middle; and p. 144, answer to question 3.

See deposition of W. Lennox, Rec., p. 160, top.

9. In this condition of their pecuniary concerns, and in November, 1866, French and Lennox had an interview in Washington with S. M. Shoemaker, J. Dean Smith, O. A. Stevens, and W. J. Phelps, at which an inchoate agreement was made for the organization of a new company and the payment of the debts of the old one. This meeting took place at the house of R. T. Merrick, Esq., and was satisfactory to French.

See deposition of George W. Brent, Rec., p. 83, foot, and 84, and his answer to 12th cross-interrogatory, p. 91.
See deposition of R. T. Merrick, Rec., pp. 106 and 107.
See deposition of J. D. Smith, Rec., p. 113, top.
See deposition of O. A. Stevens, Rec., p. 130, foot.
See deposition of French, Rec., p. 143.
See deposition of Lennox, p. 159.

10. This inchoate agreement was subsequently reduced to writing and signed by all the parties then present, French being absent, and also Shoemaker, but the latter was represented by J. D. Smith, and signed not long after.

See deposition of Brent, Rec., p. 84, foot, and 85, top.
See deposition of Merrick, Rec., p. 108.
See deposition of J. D. Smith, Rec., p. 113.
See deposition of Lennox, Rec., p. 160, 4th answer.

11. The agreement thus signed by all the parties, except French, in the beginning, was not then dated; the date was left in blank.

See deposition of Brent, Rec., p. 85, top.

And a true copy of it is found at pp. 54 and 55 of the record.

See Rec., p. 145.

It provides that in case the Alexandria and Washington Railroad Company should be revived, that is, should succeed in the suit then pending in the circuit court of Alexandria county, Va., against the Washington, Alexandria, and Georgetown Railroad Company, then, and in that case, the parties to the deed agreed to form a new corporation, and the instrument provided that French and Lennox should transfer to the new company all their in-

terest and rights in the old company. The agreement, of course, could not be complete or binding on any one until signed by French.

12. When the agreement thus reduced to writing was presented to French early in the year 1867 by Brent, at Richmond, Virginia, he refused to sign it, on certain grounds set forth by the witness, Brent, in his deposition, (Rec., p. 85 ;) but finally, on the 6th of December, 1867, French signed the contract, and thus made it complete. On the same day a separate contract was made between French and Shoemaker, by which the latter advanced the former $5,000 on the transfer to the latter of French's right and interest in the road.

See depositions of Brent, Rec., p. 85.

See depositions of J. D. Smith, p. 114, foot.

See depositions of Stevens, Rec., p. 131, answer to 3d question.

The separate deed from French to Shoemaker is found on Rec., pp. 55 and 56. By it French conveys, on account of $5,000 paid him by Shoemaker, all his right and interest in the railroad, for the purpose of securing the payment of the $5,000, and for the purposes set forth in the agreement of same date, 6th December, 1867, referred to above, and found in Rec., pp. 54 and 55.

13. After the courts in Virginia had finally decided the case of the Alexandria and Washington Railroad Company *vs.* The Washington, Alexandria, and Georgetown Railroad Company in favor of the plaintiff therein, reinstating the said company, and annulling the charter of the defendant in said suit, Walter Lennox called a meeting of the parties who had signed the agreement of 6th December, 1867.

The call of this meeting, signed by Lennox, and dated Washington, September 22, 1868, is found at Rec., pp. 100 and 101.

French was present at the meeting, and its purpose was to carry into effect the provisions of the contract of 6th December, 1867.

See dep. of Brent, Rec., p. 87.

See dep. of Merrick, Rec., p. 108, foot.

See dep. of J. D. Smith, Rec., p. 115, answer to fifth question.

The proceedings of this meeting are given in full at Rec., pp. 101 and 102. They directed, among other things, G. W. Brent to prepare and publish a call to form the new company in accordance with the provisions of the Virginia code.

French was present at this meeting, and was, besides, served with a copy of the proceedings.

See Rec., p. 102.

14. Acting under these instructions Brent prepared a form of call and caused to be called a meeting at the Mansion House Hotel, in Alexandria, Va., for the 29th October, 1868.

See his dep., Rec., p. 88, near the foot.

See also copy of the notice as published, and proof of service of same on French, at Rec., p. 102, foot, and 103, top, the call being signed (officially) by W. Lennox, who had been secretary of the old company.

The meeting was duly held on 29th October, 1868. Lennox was present, and voted on the stock assigned him by the agreement of 6th December, 1867. Mr. Shoemaker, the complainant, was elected president of the company.

See deposition of Brent, Rec., p. 88, foot.

15. James S. French, who had, as shown above, parted with all his right, title, and interest in the franchises and property of the road, agreeing at the same time to the formation of a new company and to be therein a stockholder, filed a bill of complaint in the circuit court of Alexandria county, Virginia, against Samuel Shoemaker, Adams Express Company, and Walter Lennox, on the 28th day of October, 1868, setting forth that Lennox had made a fraudulent combination with Shoemaker to injure and annoy the said Alexandria and Washington Railroad Company, and had called a meeting of stockholders at the "Mansion House," in Alexandria, for the 29th October—(see the bill spoken of, to be found 42 to 44 of the Record)—and prays an injunction against them to forbid their holding the meeting under said notice, from electing a board of directors, &c.

16. In the meantime, on the 30th day of September, 1868, a writ of possession had been issued from the circuit court of Alexandria county, Virginia, in the suit of The Alexandria and Washington Railroad Company *vs.* The Washington, Alexandria, and Georgetown Railroad Company, commanding the sheriff to put the former, the plaintiff, into possession of the railroad and its appurtenances.

See writ of possession, Rec., pp. 59 and 60.

This writ of possession was taken out by French, pretending to be president of the company, and in violation of his agreement, and he says that under it he was put in possession of the road by the sheriff.

See deposition of French, Rec., p. 147, near top.

17. The original bill filed in this case in the circuit court of the United States for the district of Virginia, by S. M. Shoemaker against J. S. French, had been prepared

and was sworn to by Shoemaker on the 27th day of October, 1868, (see Rec., p. 7, foot,) and a subpœna, ordered by Judge Underwood, against French on the same day, (see Rec., p. 8,) and a rule to show cause why an injunction should not be issued was also allowed same day, and a copy of the bill and order was served on French on 27th October, 1868, (see Rec., p. 8,) the day before he, French, applied for an injunction to prevent the meeting at the Mansion House to organize the new company.

On these facts the counsel of appellee submits the following

POINTS:

First. The case turns on the two instruments signed by French, the one by which he, with others, agreed to reorganize the Alexandria and Washington Railroad Company, (see agreement, Rec., pp. 54 and 55, and agreement, Rec., pp. 55 and 56.) If the provisions of these instruments are binding upon French as they read, and according to their plain meaning and import, then his act in taking possession of the road with the view of excluding the other parties to the contract, and his application to the circuit court of Alexandria county, Virginia, for an injunction to restrain the parties to the agreement from holding a meeting to reorganize, was a plain violation of his duty and a breach of faith, which justified the complainant in invoking the authority of the circuit court against him.

Second. French cannot be heard in an attempt to modify or change these agreements by proof of the conversations and chaffering which took place in regard to them before or at the time they were brought to a state of perfection by being reduced to writing, signed, and sealed, and more than a year before they were reduced to writing. This principle of evidence is elementary.

See Greenleaf's Evidence, §§ 277 to 282.
See Story's Equity Jurisprudence, § 1531.

Third. Of course when an equity is set up, founded on facts collateral to the deed, the party alleging may prove them by evidence dehors the deed, and may show that his signature and consent were obtained by fraud, accident, or surprise ; and all these defences were open to French in the circuit court, where he indeed averred that his signature to the contract was obtained by fraud and oppression.

See Rec., p. 20, art. 14, of French's answer.

But he has entirely failed to make proof of any fraud. The evidence shows that he signed the deed after a year's reflection on it, and at the same time solicited the advance of money which he received ; that nothing was concealed from him, nothing extorted from him ; and that the complaint of fraud and oppression is utterly groundless.

Fourth. The complaint of want of consideration is equally groundless. French was utterly destitute, without means to support himself ; the railroad was burdened with debt and litigation ; he was utterly unable to carry it on. By the contract he complains of the company is set up again, all its debts assumed by persons of complete pecuniary responsibility, and he and Lennox, in place of their worthless stock in the old company, receive 1,250 shares in the new ; and yet he pretends there was no consideration.

Fifth. The complaint made by French that at the time he made the contract he did not know that Shoemaker, Smith, Stevens, and Phelps held official relations with the Washington, Alexandria, and Georgetown Railroad Company, (brief of F. P. S., p. 9, and brief of H. O. C., p. 3,) is entirely futile.

It cannot be believed to be founded in truth. Smith, in his testimony, (Rec., p. 117, at foot,) thinks they were not such at the time of the agreement. The decree of the Virginia court (see p. 158 of the transcript) relied on to prove their official connection can only be taken as proof of such connection at the date of the institution of the suit, which must have been prior to November, 1866, as the answer was sworn to in that month, (see Rec., p. 157, at top,) and they had, it is likely, as Smith thinks, ceased to be officially related to the company in December, 1867, the date of the agreement.

But if they were so officially connected with the company at the time it is not to be believed that French could have been ignorant of the fact. The names of the president and directors of such a railroad company are of public notoriety, and when we consider that French had been suing the company for some time in a suit which involved its existence and his most important interests, we cannot listen without a smile to his declaration that he did not know who the officers were. It was in March, 1866, he had commenced his suit against the company, (see his dep., Rec., pp. 142, foot, and 143, top,) and as an exhibit he annexed the proceedings of a meeting of the company in the same year where the names of Shoemaker and the others appear.

See Rec., pp. 149 to 152.

There is no proof in the record that complainant either concealed or communicated these facts to French. He had a right to presume that French knew them, and proof of a failure to communicate them would be very far from showing a fraudulent concealment.

And French, knowing the facts he affects to have been ignorant of, would have acted just as he did; there is nothing in the record which permits us to believe the con-

trary, for when he came to Alexandria in November, 1866, to attend the fall term of the court, "I was informed," says he, "by my counsel, George W. Brent, that a meeting had been arranged to be held in Washington city between Lennox and myself and Samuel M. Shoemaker, J. Dean Smith, Oscar A. Stevens, and W. Jackson Phelps, to see if WE could not make some arrangement to advance OUR interests and promote a speedy settlement of our railroad suit."

See dep. of French, Rec., p. 143, at top.

Thus it was to settle a suit in which the Alexandria and Washington Railroad Company was plaintiff and the Washington, Alexandria and Georgetown Railroad Company was defendant, and to advance the interests of both contestants, that the negotiations were commenced which terminated in the agreement, and his alleged ignorance of the interests of his opponents in the defendant company is a transparent simulation.

Sixth. The assertion of the apppellant (French) that the action of the court below is "an unjustifiable interference on the part of the Federal courts with proceedings instituted in the State courts" (see F. P. S. brief, p. 19) is altogether unfounded. No jurisdiction of the State courts of Virginia is attempted to be interfered with.

See the injunction, Rec., p. 15.

See final decree, Rec., p. 66.

It is impossible to conceive that any proceeding in a State court is stayed by these orders, and the United States court, moreover, had first obtained jurisdiction.

Seventh. It was not necessary, as claimed by French, that the other parties to the agreement B (see Rec., pp. 54 and 55) should have been made parties to the suit.

Shoemaker had by the agreement the right to become the owner of 500 shares in the new company, whose organization French was, in violation of his contract, trying to prevent; this was a distinct, aliquot part, which gave Shoemaker, as owner of it, the right to sue alone withont the others.

Story's Equity Pleading, § 212.

And, moreover, the object of the suit was also to bring about the sale of the interest of French, which was transferred to Shoemaker alone.

See Rec., p. 7.

Eighth. Complainant has made no unreasonable delay in seeking the assistance of the court. (See brief, H. O. C., p. 9.) The agreement between French and the others (see Rec., pp. 54 and 55) provided that "should the Alexandria and Washington Railroad Company be revived, and the corporation by that name again come into existence," the same should be reorganized, French and Lennox to have 1,250 shares of stock, &c. This contract was made 6th December, 1867.

The final decree of the Virginia court bringing the Alexandria and Washington Railroad Company again into existence was on the 28th August, 1868.

See Rec., p. 147, lines 8 and 9 from top.

On the 17th September, 1868, the meeting to reorganize was called.

See Rec., p. 99.

It becoming evident, then, from French's conduct, that he was acting in violation of this contract by pretending to be president of the company, though not elected, &c., the complainant brought his bill to restrain him on the 27th October, 1868. (See Rec., p. 7, foot.) Here was a delay of not over sixty days, which is certainly not very long.

Ninth. There was no want of mutuality in the contract. French had the right to become a stockholder in the new corporation, of which no one had attempted to deprive him; and should he be impeded, his rights would no doubt be properly maintained by the courts.

Tenth. It is alleged the contract is against public policy, (see point 3, brief H. O. C., p. 10,) but nothing more is asserted to support the charge than the very usual and lawful measure of a compromise between conflicting interests. French cannot be injured by any bad faith (if there were such) of Shoemaker to the new company, which was annulled.

Eleventh. Laches and alteration of the property are suggested. (Same, p. 10.) The agreement was made when the subject of the validity of the new corporation was a question before the courts, and this involved, of course, the validity of the lease to Stevens and Phelps, referred to. They could not transfer their lease to the reorganized corporation before its reorganization took place, and if, in the meantime, their lease was annulled, it was by an action in court, which they had resisted, and for the result of which they were not to blame.

Twelfth. It is objected (same, p. 10) that Merrick and Smith were not to give anything for their stock; but if that were so, how does it avoid the contract as to Shoemaker? Merrick is not mentioned in this agreement as a stockholder. (See Rec., p. 55.) Smith was to have two hundred shares. (See Rec., p. 118, top.) His services entitled him to them. The deed imports a consideration.

Thirteenth. The error alleged on French's part in making the contract, (brief H. O. C., p. 10,) if it existed, cannot be discussed; his understanding of the contract must be gathered from its meaning displayed in its language, which is very plain, and speaks for itself.

Fourteenth. There has been no failure on Shoemaker's part to perform his obligations under the contract; on the contrary, the record shows every step to have been taken to endeavor to carry it out.

Fifteenth. Far from having made the contract under duress, as stated in brief H. O. C., p. 11, French freely solicited Shoemaker to do what was done.

See deposition of Smith, Rec., p. 114, top.

See deposition of Brent, Rec., p. 91, answer to 12th question.

See deposition of Stevens, Rec., p. 131, answer to 3d question.

See deposition of Stevens, p. 132, answer to 10th question.

Sixteenth. There was no agreement on the part of French to pay Shoemaker for what he (Shoemaker) was bound to do without payment, as averred in brief H. O. C., p. 12. The contract was simply to reorganize a railroad company on certain conditions, which, independently of his agreement, Shoemaker had not the slightest obligation in the world to do.

Seventeenth. The point that the contract was inequitable and unconscionable (same brief, p. 12) is only a reiteration of statements already confuted, and is disproved by the entire body of the evidence.

Eighteenth. The point made on same brief, p. 12, that Shoemaker delayed to carry out the contract, has already been shown to be inaccurate and of no value. (See above point 8.)

Nineteenth. The general objection, that the contract is tainted with fraud, (brief H. O. C., p. 13,) has been disproved over and over again.

JOS. H. BRADLEY,
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Of Counsel for Shoemaker, Appellee.

FEBRUARY 28, 1872.